



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Ms. Melissa Winblood  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR95-1564

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37113.

The City of El Paso (the "city") received a request for the "open records regarding the process of elimination and the final decisions that eliminated [Bell Security Systems] from being awarded the bid for the electronic security systems to be installed in the libraries." You have identified several documents which you feel are responsive to this request but claim that the information contained in these documents "may 1) give advantage to [the requestor] as a competitor or bidder and 2) constitute trade secrets or commercial or financial information or information which is privileged or confidential by statute or judicial decision" and that "the privacy or property interests of Sonitrol [of El Paso] may be involved." You assert that the responsive documents are excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code.<sup>1</sup>

Pursuant to section 552.305, we also notified Sonitrol of El Paso ("Sonitrol"), the party whose proprietary interests may be implicated by this request. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990). Sonitrol responded to our notification by asserting that certain information in their proposal to the city is excepted from required public disclosure under the Open Records Act.

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<sup>1</sup>The city has submitted for our inspection copies of the documents it feels are responsive to this request.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. See Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. Because you have not demonstrated any potential specific harm to the city's interest, you may not withhold the requested information under section 552.104 of the Government Code.

Section 552.110 excepts from disclosure trade secrets and commercial or financial information obtained from a person and confidential by statute or judicial decision. Section 552.110 is divided into two parts: (1) trade secrets and (2) commercial or financial information, and each part must be considered separately.

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).<sup>2</sup>

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, *supra*; see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

You merely assert that the information may constitute trade secrets, without providing relevant information regarding the factors necessary to make a section 552.110 claim. Accordingly, you may not withhold the requested information unless Sonitrol has established a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. *Cf.* Open Records Decision No. 552 (1990) at 5 (when a governmental body takes no position with regard to the application of the “trade secrets” branch of section 552.110 to requested information, we accept a private person’s claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law).

Sonitrol has asserted that its pricing breakdown and its customer list are “trade secrets” but has also not provided relevant information regarding the factors necessary to make a section 552.110 claim. We conclude that Sonitrol has failed to establish a prima facie case that this information is a trade secret and, therefore, you may not withhold this information as a “trade secret” under section 552.110.

Section 552.110 also protects “commercial or financial information” if it is information made confidential by a statute or judicial decision. *See* Open Records Decision No. 592 (1991) at 6. Because the city has not demonstrated that a statute or judicial decision excepts this information from disclosure, and because Sonitrol has not even asserted that the requested information is “commercial or financial information,” we conclude that this information may not be excepted as “commercial or financial information” under section 552.110 of the Government Code.

In summary, the city may not withhold the requested information under either section 552.104 or 552.110 of the Government Code. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301<sup>3</sup> regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 37113

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<sup>3</sup>Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 18, 1995 Tex. Sess. Law Serv. 5127, 5139.

Enclosures: Submitted documents

cc: Ms. Barbara Miramon  
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(w/o enclosures)

Mr. Jerry L. May, President  
Sonitrol of El Paso  
4042 Doniphan Road  
El Paso, Texas 79922  
(w/o enclosures)