



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1995

Ms. A. Lynn Nunns
Assistant City Attorney
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

OR95-1607

Dear Ms. Nunns:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 30931.

The City of Carrollton (the city) has received a request for "a complete copy of all competing bids" on a contract let by the city for the collection of court-ordered fines, court costs, and fees. You inform us that you have provided most of the material to the requestor. The requestor has subsequently narrowed his request to cover only sample demand letters submitted by the winning bidder to be sent to defendants on behalf of the city.

Pursuant to section 552.305 of the Government Code, we have notified the parties whose proprietary interests are implicated by this request. We have received no responses from Texas Municipal Services, Inc., or GC Services, although, as noted above, the request as narrowed no longer seeks documents submitted by those companies. Citing only section 552.101 of the Open Records Act, Municipal Services Bureau, the winning bidder, claims that section 252.049 of the Local Government Code exempts information submitted by that company from required public disclosure.

Section 252.049 of the Local Government Code, provides:

- (a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Local Gov't Code § 252.049.

We understand the assertion that section 252.049 protects the requested material from required public disclosure to be a claim that the material constitutes a trade secret and is protected from required public disclosure by either section 552.101 in conjunction with the Local Government Code provision or by section 512.110 of the Government Code. Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. We only address the "trade secrets" branch of section 552.110.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret may consist of

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 single or ephemeral events 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.

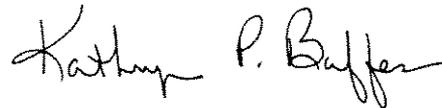
Restatement of Torts § 757 cmt. b (1939).

If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must 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. Open Records Decision No. 552 (1990) at 5. We have examined the arguments submitted to us for review. We conclude that Municipal Services Bureau has not made a prima facie case that the sample demand letters constitutes trade secrets. Accordingly, we conclude that the requested information may not be withheld from required public disclosure under the trade secrets branch of section 552.110 of the act. Without that prima facie case, we are similarly unable to determine that the requested material constitutes a trade secret under section 252.049 of the Local Government Code. Therefore, you may not withhold the requested material under section 552.101 of the Government Code, and you must immediately submit the material to the requestor.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/PIR/rho

Ref.: ID# 30931

Enclosures: Submitted documents

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