



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 27, 1997

Mr. Robert J. Gervais  
Assistant City Attorney  
City of Galveston  
Legal Department  
P.O. Box 779  
Galveston, Texas 77553-0779

OR97-0165

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103164.

The City of Galveston (the "city") received a request for copies of the proposals and related documentation that the city received from four particular companies. You state that you contacted all four companies and only Employers General Insurance Group, Inc. ("EGI") objected to the release of its proposal.<sup>1</sup> Specifically, EGI objects to the public disclosure of pages 1.1-1.5 and 1.10-1.24 of its proposal. You have submitted copies of those pages to this office for review.<sup>2</sup>

Pursuant to section 552.305 of the Government Code, we notified EGI of the request for information and of its opportunity to claim that its proposal is excepted from disclosure. EGI responded by claiming that the above-listed pages of its proposal contain trade secrets that are excepted from disclosure under section 552.110 of the Government Code.

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<sup>1</sup>As the other three companies did not object to the public disclosure of their proposals, we assume that you have provided the requestor with copies of their proposals.

<sup>2</sup>You also claim that section 552.101 of the Government Code (information confidential by law excepted from required public disclosure) and section 252.049 of the Local Government Code (trade secrets and confidential information in proposals not open for public inspection) except the information at issue from disclosure. However, you offer no arguments to support this claim. Therefore, we address only the section 552.110 claim that EGI has raised.

Section 552.110 protects the property interests of private persons by excepting from 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. 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 (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 is

... 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) (emphasis added). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>3</sup> This office has held that if a governmental body takes no position with regard to the application of the trade secret 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 argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

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<sup>3</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 § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

Having reviewed the information submitted to us by EGI, we find that EGI's arguments against disclosure are merely conclusory and do not demonstrate, by a *prima facie* case, that its proposal contains trade secrets. Nor has EGI argued that its proposal is protected under the commercial or financial information prong of section 552.110. Thus, we conclude that the proposal is not excepted from disclosure by section 552.110 of the Government Code and must, therefore, be released 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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 103164

Enclosures: Submitted documents

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