



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 11, 1997

Ms. Elizabeth Horn
Associate General Counsel
Dallas Housing Authority
3939 N. Hampton Road
Dallas, Texas 75212

OR97-1364

Dear Ms. Horn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37478.

The Dallas Housing Authority (the "DHA") received a request for a proposal from Rusk Remedial Services, Inc. which was submitted in response to an invitation for bids relating to demolition of Edgar Ward Place, a public housing development. The company marked the requested information as "confidential and proprietary." You ask whether the information may be withheld under section 552.101 of the Government Code and section 252.049 of the Local Government Code.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite section 252.049 of the Local Government Codes as a statute which may make the requested information confidential. Section 252.049 provides as follows:

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

¹We note that this request for a ruling was made more than ten days after the city received the request for information. However, the presumption of openness that arises when the ten-day requirement is not met, is overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness may be overcome by showing that information is made confidential by another source of law or affects third party interests). As third party proprietary interests are at issue, we address the city's request for a ruling.

(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 Government Code § 252.049. We conclude that this provision is duplicative of the protection of section 552.110 after the contract has been awarded. Therefore, we will address whether DHA may withhold the requested information under section 552.110 of the Government Code.²

Section 552.110 excepts from disclosure trade secrets or financial information obtained from a person and confidential by statute or judicial decision. 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). If a governmental body takes no position with regard to the application of the “trade secrets” branch of section 552.110 to requested

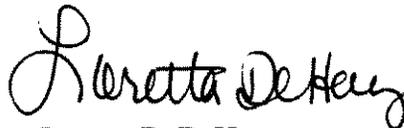
²Because you do not argue that negotiations are ongoing, we assume that the contract has been awarded. After a contract is awarded, section 252.049 protects from required public disclosure only trade secrets and confidential information in the requested proposal.

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. Open Records Decision No. 552 (1990) at 5.³

Pursuant to section 552.305 of the Government Code, this office informed Rusk Remedial Services, Inc. of the request and of its obligation to submit to this office its arguments as to why any claimed exceptions to disclosure apply to its information. The company never responded. Because the company has not met its burden of establishing that the requested information is a trade secret, the city may not withhold the requested information under section 552.110 of the Government Code.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LMM/rho

Ref.: ID# 37478

Enclosures: Submitted documents

³The 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 other 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 Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

cc: Mr. Tony Oyekan
The Oyekan Group USA, Inc.
1825 Market Center Blvd., Suite 350
Dallas, Texas 75207
(w/o enclosures)

Rust Remedial Services, Inc.
100 Glenborough, Suite 500
Houston, Texas 77067-3611
(w/o enclosures)