Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 10, 1997

Mr. Gregory M. Ellis
General Manager
Edwards Aquifer Authority
P.O. Box 15830
San Antonio, Texas 78212-9030

OR97-1553

Dear Mr. Ellis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107133.

The Edwards Aquifer Authority (the "authority") received a request for "any and all applications for initial Regular Permits and supporting documentation filed with the Edwards Aquifer Authority before, on, or after December 30, 1996." Redland Stone Products Company ("Redland Stone") is the only company that has objected to the requestor reviewing its permit application and supporting documentation. The requestor has been given access to all other requested information. You have invoked the trade secret prong of section 552.110 of the Government Code on behalf of Redland Stone and submitted to this office the information that Redland Stone believes is excepted from required public disclosure.

Pursuant to section 552.305 of the Government Code, we notified Redland Stone of the request for information and of its opportunity to claim that the submitted information is excepted from disclosure. Redland Stone did not respond to our notification.

Section 552.110 protects the property interests of third parties 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

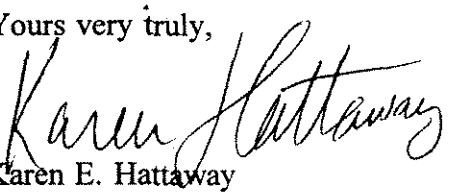
> the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

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).[1] 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.

In this case, since neither the authority nor Redland Stone has provided us with written comments explaining how section 552.110 may apply to the submitted information, we have no basis upon which to pronounce the submitted information protected by section 552.110. Open Records Decision No. 363 (1983). Accordingly, we conclude that the information is not excepted from required public disclosure pursuant to section 552.110 and must 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

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[1]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.

Ref: ID# 107133

Enclosures: Submitted documents

cc: Mr. C. Thomas Koch
Vice President
C. Thomas Koch, Inc.
RR 1, Box 161
Blanco, Texas 78606
(w/o enclosures)