



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 13, 1997

Mr. Mike Leasor  
Cedar Hill Independent School District  
P.O. Box 248  
Cedar Hill, Texas 75106

OR97-1817

Dear Mr. Leasor:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108186.

The Cedar Hill Independent School District (the "school district") received a request for various information pertaining to the food service management company that contracts with the school district, specifically, the contract between the school district and the food service company for the 1996-97 school year, as well as the monthly bills and operating reports the company submits to the school district for the same time period. You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.104 and 552.110 of the Government Code. Marriott Management Services Corporation ("Marriott") is currently under contract with the school district to manage and operate its food service. Marriott objects to the public disclosure of the requested information, asserting that the information is excepted from required public disclosure under section 552.104 of the Government Code and also section 552.110 of the Government Code as a trade secret. *See* Gov't Code § 552.305 (permitting interested third party to submit reasons requested information should be withheld).

The school district offers no explanation for its assertion that the requested information is excepted from public disclosure under Government Code sections 552.101, 552.104 and 552.110. A governmental body may rely upon a third party to explain the applicability of exceptions when the third party's privacy or property rights are implicated by the public disclosure of the requested information. *Id.*, *see* Open Records Decision No. 541 (1990) at 3.

Section 552.110 of the Government Code excepts a trade secret from required public disclosure. 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 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, . . . [but] 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 (1939).<sup>1</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.

The contract, bills, and operating reports pertain to the school district, just one of Marriott's clients. As such, the information relates to "single or ephemeral events in the conduct of" Marriott's business. However, Marriott addresses each of the six trade secret factors and avers that the release of the requested information will disclose its specialized methodology for assessing the particular needs of a school district and tailoring food services programs to meet those individual needs (its "evaluation methodology"). Marriott has described in brief detail the components of that evaluation methodology. Marriott states that the contract discloses not only the general terms and conditions governing the relationship between Marriott and the school district, but also the fees to be paid the school district and the guarantees offered by Marriott, information Marriott says is unique to the school district.

Prior decisions of this office have questioned whether the general terms of a contract with a state agency could ever constitute a trade secret. *See* Open Records Decision Nos. 541 (1990), 514 (1988). Furthermore, even assuming we were to conclude that Marriott's evaluation methodology constitutes a trade secret -- a conclusion we do not reach -- we find Marriott's argument that the release of the contract will allow its competitors to obtain its evaluation methodology to be too speculative. Moreover, pricing information in commercial transactions with a governmental body are not considered trade secrets, notwithstanding the fact that the company maintains such information as secret. *See* Open Records Decision

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<sup>1</sup>The six factors include: 1) the extent to which the information is known outside of [the company's] business; 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 to [its] competitors; 5) the amount of effort or money expended by [the company] in developing this information; 6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS, § 757 (1939).

Nos. 319 (1982) at 3, 306 (1982) at 3; *see also Gonzales v. Zamora*, 791 S.W.2d 258 (Tex. App.--Corpus Christi 1990, no writ) (uniqueness not a prerequisite for existence of trade secret). We conclude that the school district may not withhold the information from the requestor based on section 552.110. *Cf.* Freedom of Information Act Guide & Privacy Act Overview (1995) 151-152 (disclosure of prices charged government is cost of doing business with government); Open Records Decision No. 494 (1988) (public has strong interest in release of prices in government contract awards).

Marriott also raises section 552.104 of the Government Code, which excepts from required public 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 usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. Consequently, a governmental body may waive section 552.104. *See* Open Records Decision No. 592 (1991) at 8.

The contract here, of course, has been awarded. Moreover, the school district has not addressed the applicability of this exception to the requested information. Marriott lacks standing to assert the applicability of this exception. We conclude that the school district may not withhold the requested information from the requestor based on section 552.104 of the Government Code.

The school district raises Government Code section 552.101, which applies to information deemed confidential by law. Neither the school district nor Marriott has explained the applicability of this exception in this instance. Nor are we aware of any law that would deem confidential the requested information. Consequently, the school district may not withhold the requested information from the requestor based on section 552.101.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/alg

Ref.: ID# 108186

Enclosures: Submitted documents

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