



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1997

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR97-1990

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108288.

The Texas Department of Transportation (the "department") received a request for the "billboard agreement with Duke-Keller for the K-Mart center in New Braunfels." The requestor also seeks the letter submitted by K-Mart and Duke-Keller's approved permit application. You explain that the requested information may be proprietary in nature and protected from disclosure by the Government Code. Gov't Code § 552.007; Gov't Code § 552.305. You raise no exception to disclosure on behalf of the department, and make no arguments regarding the proprietary nature of the requested information. You have submitted the requested information for our review.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Duke-Keller Outdoor Advertising, Inc. (Duke-Keller) about the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Duke-Keller responded to our notice by arguing that its lease agreement with K-Mart is protected from disclosure by section 52.110 of the Government Code. Duke-Keller states that it does not object to release of the remaining requested information. Thus, the department must release the approved permit application and the letter from K-Mart.

Duke-Keller claims that its lease agreement is protected as a trade secret. Section 552.110 protects the property interests of private 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 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 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 5.¹

After reviewing Duke-Keller's arguments, we find that the company has not demonstrated that the lease agreement here is a trade secret under section 552.110 of the Government Code. Duke-Keller has failed to establish all the necessary factors indicating that the information constitutes a trade secret. Cf. Open Records Decision Nos. 541 (1990) (Attorney General reluctant to find entire contract is trade secret information), 514 (1988), 184 (1978). The department must also release the requested lease agreement.

¹The 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 also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/rho

Ref: ID# 108288

Enclosures: Submitted documents

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