



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 26, 1997

Mr. Alberto J. Pena  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR97-2607

Dear Mr. Pena:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110405.

The City of San Antonio (the "city") received a request for "a copy of the proposal submitted by Landy, Jacobs and Assoc." You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first assert that the requested proposal is excepted from disclosure by section 552.104. Section 552.104 excepts 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 in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. You state, however, that the city has accepted the proposal and entered into a contract with Landy, Jacobs & Associates, Inc. ("LJA"). Section 552.104 is inapplicable when the bidding on a contract has been completed and the contract is in effect. *See, e.g.,* Open Records Decision Nos. 541 (1990) at 5, 514 (1988) at 2, 319 (1982) at 3. Therefore, the city may not withhold the requested information under section 552.104.

Next, you contend that the requested proposal may be protected by section 552.110 of the Government Code. Since the property and privacy rights of a third party may be implicated by the release of the requested information here, this office notified LJA 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). LJA responded to our notification by arguing that pages 11-35 of its Technical Proposal, pages 36-37 of the Cost Proposal, and the entirety of the Appendix Manual are protected as trade secret information.

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) (emphasis added); *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.<sup>1</sup>

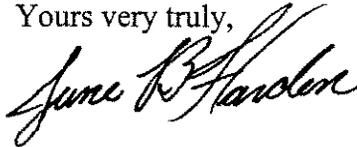
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<sup>1</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and 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.

LJA has established, by a *prima facie* case, that certain portions of its proposal constitute a trade secret in that these portions reveal a methodology that is continually used in its business operations. However, LJA has not established that the remaining portions of its proposal are protected under section 552.110. Therefore, except for the portions which we have marked, the city must release the remaining portions of the proposal 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/glg

Ref.: ID# 110405

Enclosures: Submitted documents

cc: Mr. Fred M. Rafilson, Ph.D.  
Industrial/Organization Solutions, L.L.C.  
5733 N. Sheridan Road, Suite 5A  
Chicago, Illinois 60660  
(w/o enclosures)

Mr. Rick R. Jacobs, Ph.D.  
Senior Vice President  
Landy, Jacobs and Associates, Inc.  
2737 Mapleton Avenue, Suite 301  
Boulder, Colorado 80304  
(w/o enclosures)