



May 24, 1999

Mr. Jose R. Guerrero
Montalvo & Ramirez
900 N. Main
McAllen, Texas 78501

OR99-1444

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124636.

La Joya Independent School District (the "district") received a request for

a copy of the actual proposal which Assetlink, and all other companies, submitted to La Joya ISD to do the entire fixed asset project and also a copy of the invoice for the software and other items you purchased from Assetlink.

The proposals of Assetlink Incorporated ("Assetlink") and Valuation Resource Management, Inc. ("VRM") are responsive to the request. Assetlink informed the district that it considers portions of its proposal to be a trade secret. VRM informed the district that it considers its entire proposal to be a trade secret. Therefore, the district has released only the requested invoice and the portions of Assetlink's proposal that Assetlink does not consider to be a trade secret. On behalf of Assetlink and VRM, you raise section 552.110 of the Government Code and ask that we consider whether the remaining information at issue is excepted from disclosure.

Pursuant to section 552.305 of the Government Code, we notified Assetlink and VRM about the request for information and of their opportunity to claim that the information at issue is excepted from disclosure. *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 Public Information Act in certain circumstances). Assetlink did

not respond to our notice. VRM responded by claiming that the employee information, client list, and sample reports contained in its proposal are trade secrets.

Section 552.110 of the Government Code excepts 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 party’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 at 5 (1990).¹

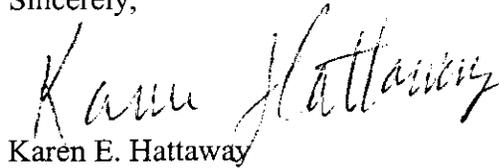
We have reviewed the district’s arguments, the letters in which Assetlink and VRM notified the district of their trade secret claims, and the arguments we received from VRM. These parties have not established, by a *prima facie* case, that the information at issue is a trade

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 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

secret. Therefore, we conclude that the information is not excepted from disclosure under 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 questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive style with a large initial "K".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 124636

encl. Submitted documents

cc: Mr. W. Lang Glotfelty
RCI Technologies, Inc./Records Consultants, Inc.
10826 Gulfdale
San Antonio, Texas 78216-3607
(w/o enclosures)