



July 22, 1999

Ms. Kaye Holland Edwards
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR99-2063

Dear Ms. Edwards:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125968.

The City of San Angelo (the "city") received a request for "all public information regarding the wireless communication site at 917 Cresswell, including permit, zoning, & special permit files." You do not claim an exception for the documents created by the city, and we assume that you will release this information. You assert, however, that some of the responsive documents may be protected from disclosure by section 552.110 of the Government Code. Gov't Code §§ 552.007, .305.

Since the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified eight third parties of the request for information and 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). Only Monosite responded to our notice by claiming that all plans, drawings, calculations, and engineering in regard to this wireless communication site constitute the trade secrets of the company.

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 at 5 (1990).¹ After reviewing the submitted arguments, we believe that Monosite has made a prima facie demonstration that the its plans and drawings must be protected as a trade secret.

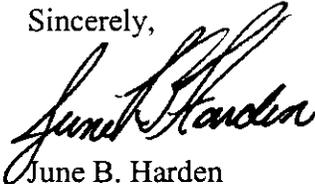
We note that the city only submitted documents from Valmont Industries, Inc. (“Valmont”), Western Wireless, and ROHN. Since these companies failed to respond to our notice, we cannot conclude that their information is excepted from disclosure under section 552.110 of the Government Code. *See* Open Records Decision Nos. 552 at 5 (1990) (party must

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).

establish prima facie case that information is trade secret), 542 at 3 (1990). However, representatives from Monosite claim that although these documents appear to be the property of Valmont, Western Wireless, and ROHN, the submitted plans and drawings are legally the property of Monosite. Therefore, based on Monosite's assertion that it legally owns the submitted plans and drawings, the city must withhold these documents under section 552.110.

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 125968

Encl. Submitted documents

cc: Mr. Bruce Howard
23123 East Mission
Liberty Lake, Washington 99010
(w/o enclosures)

Mr. Richard Whitmore
Western Wireless
1912 Warehouse Road
Midland, Texas 79703
(w/o enclosures)

Western Wireless
2001 N.W. Sammamish Road S.E.
Issaquah, Washington 98027
(w/o enclosures)

Nation Wide Buildings
1111 Page Avenue
Odessa, Texas 79761
(w/o enclosures)

Mr. C. Joe Hensley
2408 South Market Street
Odessa, Texas 78871
(w/o enclosures)

Mr. Danny Calhoun
2105 Austin Street
San Angelo, Texas 76903
(w/o enclosures)

Dave Brinker, P.E.
ROHN
6718 West Plant Road
Peoria, Illinois 61604
(w/o enclosures)

Valmont Industries, Inc.
P.O. Box 358
Valley, Nebraska 68064
(w/o enclosures)

Mr. Jim Hoeffner
Monosite
515 Congress Avenue, Suite 2600
Austin, Texas 78701
(w/o enclosures)