



July 29, 1999

Ms. Martha T. Williams
Port of Houston Authority
111 East Loop North
Houston, Texas 77029-4327

OR99-2141

Dear Ms. Williams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126087.

The Port of Houston Authority (the "Authority") received a request for access to information related to "Bulk Material Dock and Adjacent land lease" in a specified time period. You have submitted to this office for review information you identify as "entries to the Executive Session Minutes." You claim that these minutes are made confidential by section 551.104(c) of the Government Code. You have also submitted one page of notes along with argument from a third party which seeks to have that item withheld. Representatives of Trans-Global Solutions, the third party, claim that the submitted notes "include[s] trade secrets, proprietary and confidential information." The authority does not assert a position regarding the claims of the third party. We assume that all responsive information not submitted for our review has been released. We have considered the arguments raised and the information submitted.

Interests of third parties may be protected by section 552.110 of the Government Code. *See* Open Records Decision No. 481 (1987) (the Office of the Attorney General will raise section 552.110 when necessary to protect third-party interests). Section 552.110 protects the property interests of those supplying information to governmental entities 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.

Under the Public Information Act, "trade secret" has the meaning specified in 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). Trade secrets are defined as:

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.

The subject information consists of notes taken in relation to one business transaction with this third party. From our review of this document we conclude that it is "simply information as to a single or ephemeral event in the conduct of the business." Further, Trans-Global Solutions has not established that the information is a trade secret. *See Open Records Decision No. 552 (1990)*. Therefore the information is not excepted from disclosure under the trade secrets branch of section 552.110 of the Government Code.

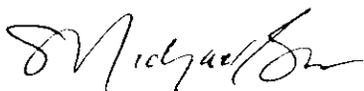
Information may be withheld under the "commercial or financial information" branch of section 552.110 only where a statute or judicial decision expressly holds that information to be privileged or confidential. *See Birnbaum v. Alliance of Am. Insurers*, 1999 WL 314976 (Tex. App.—Austin May 20, 1999, no pet. h.) (rejecting *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir 1974) as a "judicial decision" for purposes of section 552.110 of the Government Code). In this case, we are aware of no such authority. Therefore, the subject notes may not be withheld under the commercial or financial information branch of section 552.110. This information must therefore be released.

Addressing the "entries to the Executive Session Minutes," we note that section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3)*." (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. *See Open Records Decision No. 495 (1988)*. The Authority must, therefore, withhold the requested minutes from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.¹

¹We assume that the "minutes" to which you refer are synonymous with the certified agenda

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126087

Encl. Submitted documents

cc: Mr. Kenneth L. Berry
3746 Castel River Drive
Corpus Christi, Texas 78410
(w/o enclosures)