



August 6, 1999

Mr. Charles Karakashian, Jr.
Senior Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR99-2202

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126300.

The Department of Public Safety (the "department") received two requests for the winning proposal submitted in response to RFP #R-8-1000. You claim that release of the responsive information implicates the interest of a third party, Hughes Network Systems ("Hughes"), and that the requested information is excepted from disclosure under the "trade secrets" aspect of section 552.110 of the Government Code. You have submitted the responsive information to this office for review. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.305 of the Government Code, this office informed Hughes of the request for information and provided it the opportunity to claim any exception to disclosure it may contend applies to the requested information, together with argument in support of that exception. 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 Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions in certain circumstances). The notification stated that if Hughes did not respond within 14 days of receipt of the notice, this office will assume that it has no privacy or property interest in the requested information. Hughes did not respond.

Section 552.110 of the Government Code protects the property interests of those supplying information to governmental entities by excepting two types of information from disclosure:

(1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code §552.110. 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).

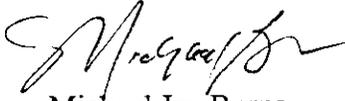
Neither Hughes nor the department has provided sufficient factual allegations to establish a *prima facie* case that the information constitutes a trade secret. *See* Open Records Decision No. 552 (1990). Further, from our review of the subject information, we conclude that, in its entirety, it is not a "process or device for continuous use in the operation of the business" but rather is "information as to a single or ephemeral event in the conduct of the business." Therefore, the information may not be withheld under section 552.110 of the Government Code.

We note that the information includes a copyright notice. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Therefore, the copyrighted information must be made available for inspection or copying but the *department* may not copy these documents for release.

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

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Ref: ID# 126300

Encl: Submitted documents

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