



November 22, 1999

Mr. William E. Wood
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR99-3352

Dear Mr. Wood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129644.

The City of San Antonio (the "city") received a request for a copy of the contract between the city and Ericsson, Inc. ("Ericsson") for a multisite, 800 MHz Trunked Radio System. You assert that portions of the requested contract may be protected from disclosure pursuant to section 552.110 of the Government Code. You raise no exception to disclosure on behalf of the city, and make no arguments regarding the proprietary nature of the requested information. You have submitted for our review a copy of the Agreement and ten exhibits labeled A through J.

Pursuant to section 552.305 of the Government Code, you notified Ericsson of the request for information. *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). Ericsson responded to the notice by arguing that Exhibits A, C, D-1, D-2, F, G, J, K, L, and N were protected from disclosure under section 552.110.¹ 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 for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

¹Exhibits K, L, and N were not submitted to this office for review. Since we cannot determine whether this information is protected by section 552.110, Exhibits K, L, and N must be released.

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).² However, as in this case, where no demonstration of the factors necessary to establish a trade secret claim is made, we cannot conclude that section 552.110 is applicable. Open Records Decision No. 402 (1983). Consequently, the commission may not withhold the submitted Agreement and exhibits under the trade secret prong of section 552.110.

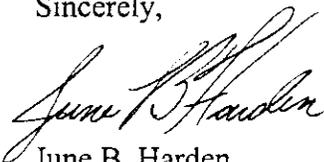
As for the commercial or financial information prong of section 552.110, the governmental body or interested third party must provide a specific factual or evidentiary showing, not a conclusory or generalized allegation, that substantial competitive injury would likely result from disclosure. Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 7, 1999 Tex. Sess. Law Serv. 4500, 4503 (Vernon) (to be codified as an amendment to GOV’T CODE § 552.110); *see*

²The 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).

also National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974). After reviewing the records and Ericsson's statements regarding the confidential nature of the documents, we conclude that the information may not be withheld under the commercial or financial information prong of section 552.110. Furthermore, we note that the terms of a contract with a governmental body are not excepted from disclosure. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, §5, 1999 Tex. Sess. Law Serv. 4500 (Vernon) (to be codified as Gov't Code § 552.022(3)). Therefore, based on the foregoing, we conclude that the Agreement and exhibits must be released in their entirety 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 129644

Encl. Submitted documents

cc: Mr. Scott Moore
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