



May 3, 2001

Mr. Michael J. Cosentino
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-1798

Dear Mr. Cosentino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148269.

The City of Bryan (the "city") received two requests for information pertaining to the LaSalle Hotel. The first request, paraphrased, seeks the following information:

1. All correspondence from January 1, 2001 through March 22, 2001 from First National Bank, including notes and notes from phone calls, to any of five named entities, or to any other entity having financial interests in the LaSalle Hotel.
2. All correspondence from January 1, 2001 through March 22, 2001 from the federal Department of Housing and Urban Development ("HUD"), including notes and notes from phone calls, regarding the loan guaranteed by the city.
3. From October 2000 through March 2001, all documents that show income, revenue, or losses from four named entities, or any other entity with financial interests concerning the LaSalle Hotel.

You state that the city has no information responsive to item 2 above. The second request seeks "all correspondence pertaining to the financial status of the LaSalle Hotel." You have submitted for our review Exhibits A, B1, B2, and B3, which you state are representative

samples of responsive information.¹ You assert that the information responsive to the second request, as well as the information responsive to the above items 1 and 3 of the first request, is excepted from disclosure under section 552.110 of the Government Code. You notified LaSalle Hotel, Ltd. ("LaSalle"), the owner of the LaSalle Hotel, of the requests. *See Gov't Code § 552.305*. Through its legal counsel, LaSalle has submitted to the city comments in support of the applicability of section 552.110. You have forwarded these comments for our consideration. This office also has received comment from one of the requesters, and from a member of the public.² *See Gov't Code § 552.304*. We have considered the asserted exception and the submitted comments, and we have reviewed the submitted information.

Section 552.110 protects the interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) certain commercial or financial information. *See Gov't Code § 552.110(a), (b)*. As to the trade secret branch of section 552.110, the Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).³ Section 757 provides that a trade secret is

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We are informed that a third requester has requested documentation of payments made to the city's Community Development Loan Fund on loans made to the LaSalle Hotel. As you have not sought our decision in regard to the information responsive to this request, this ruling does not address such information.

³The 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 others 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).

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 single or ephemeral events 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.

This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must 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 argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). Upon careful review of the submitted comments and the information at issue, we find that neither the city nor LaSalle has made a *prima facie* demonstration that any of the information at issue contains or consists of trade secrets.

The commercial or financial branch of section 552.110 requires the entity arguing the exception to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999); *see also* Open Records Decision Nos. 639 (1996), 541 (1990), 514 (1988). With respect to Exhibits B1, B2, and B3, we do not believe that either the city or LaSalle has made a specific factual or evidentiary showing that substantial competitive injury to La Salle would result from disclosure of these exhibits. On the other hand, we find that LaSalle's comments demonstrate through specific factual or evidentiary material that the information in Exhibit A, if publicly released, would likely result in substantial competitive harm to LaSalle. Accordingly, the city must withhold Exhibit A pursuant to section 552.110, but must release to the requesters the information represented by Exhibits B1, B2, and B3.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a *previdōus* determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

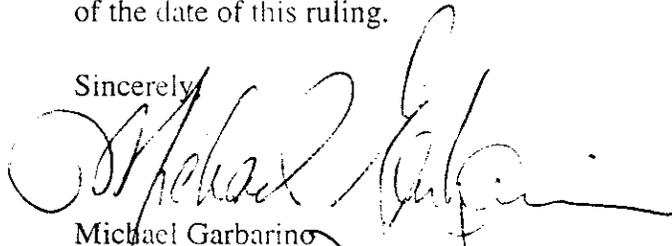
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 148269

Encl. Submitted documents

cc: Ms. Beth Price
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