



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2004

Mr. Jeffrey Moore
Brown & Hoffmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2004-5232

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 203180.

The City of Roanoke (the "city"), which you represent, received a request for information relating to a specific commercial development. You state that some of the responsive information has been released. You claim, however, that the submitted drawings and plans pertaining to a Citibank facility are excepted from disclosure under section 552.101 of the Government Code. In addition, you assert that the release of this information may implicate the proprietary interests of Citigroup Technology, Inc. ("Citigroup"). Pursuant to section 552.305 of the Government Code, you notified Citigroup of the request and of its opportunity to submit comments to this office. *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 to disclosure in certain circumstances). We have considered the submitted arguments and have reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain

information related to terrorism confidential. The city and Citigroup claim that the submitted information is confidential under section 418.181, which provides that “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.” Gov’t Code § 418.181.

A governmental body or third party asserting section 418.181 must adequately explain how the responsive records fall within the scope of the provision. *See generally* Gov’t Code § 552.301(e)(1)(A). In this instance, Citigroup explains that the facility at issue will be a data processing center that will provide electronic backup for billions of commercial transactions. Citigroup further asserts that a disruption to this facility could severely impact the company’s business operations and, in turn, cause enduring economic damage to the country’s economic system. In support of its claims, Citigroup has submitted a report issued by the U.S. Securities and Exchange Commission that encourages financial institutions to establish backup sites for key operations to minimize the risk of wide scale disruptions of services. Based on your representations and our review of the supporting documentation, we find that the facility is “critical infrastructure” for the purposes of section 418.181. *See generally* Gov’t Code § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation).

Now that it has been demonstrated that this facility constitutes “critical infrastructure,” we must next determine whether the records will “identify the technical details of particular vulnerabilities” of the facility to an act of terrorism. The city submitted the following information for our review: a preliminary utility plan, a preliminary drainage plan, exterior elevations, an engineering plan, a landscaping plan, and a tree survey. Citigroup argues that the utility, drainage, and engineering plans reveal information about the facility’s power sources, communication feeds, utility and drainage routes, and other critical access points. Citigroup explains that an individual could use this information to pinpoint the facility’s vulnerable areas thereby making it easier to disrupt the services provided by this critical infrastructure. After reviewing Citigroup’s arguments and the three plans, we find that Citigroup has demonstrated that the utility plan, the drainage plan, and the engineering plan identify the technical details of particular vulnerabilities of this critical infrastructure to an act of terrorism. Thus, these three plans must be withheld from disclosure under section 552.101 in conjunction with section 418.181. Citigroup also argues that the exterior elevations, the landscape plan, and the tree survey reveal information that could be used to disrupt the facility’s operations. However, after reviewing the actual documents, we are not persuaded that these plans reveal technical details about the facility’s vulnerabilities. Accordingly, the exterior elevations, the landscape plan, and the tree survey may not be withheld under section 552.101.

Next, we consider Citigroup’s contention that the exterior elevations, the landscape plan, and the tree survey are excepted from disclosure under section 552.110(a) of the Government

Code. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code § 552.110(a). 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). 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 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.

RESTATEMENT OF TORTS § 757 cmt. b (1939). There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (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 No. 232 (1979). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990).

However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

In this instance, we find that the remaining three plans do not meet the definition of a trade secret because they relate solely to this project. *See* RESTATEMENT OF TORTS § 757 cmt. b (1939). Accordingly, the exterior elevations, the landscape plan, and the tree survey may not be withheld under section 552.110(a). Since you have not raised any additional exceptions to disclosure for these plans, we conclude that the city must release the exterior elevations, the landscape plan, and the tree survey.

In summary, the city must withhold the utility plan, the drainage plan, and the engineering plan under section 552.101. The exterior elevations, the landscape plan, and the tree survey must be released.

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 previous 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).

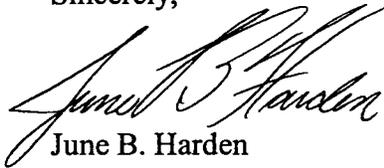
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 203180

Enc: Submitted documents

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