



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2005

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
Legal Department  
P. O. Box 368  
Houston, Texas 77001-0368

OR2005-09055

Dear Mr. Gambrell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 233739.

The City of Houston (the "city") received a request for "[a] record layout for the [city's] 311 Call Center Database[, including] a list of fields of information kept in that database and/or tables[,] a list of all tables[, and] and glossary of terms defining all fields, tables, columns, etc. in the 311 database." You state that the city will make available some requested information. However, you believe that the submitted information may implicate the proprietary interests of Motorola, Inc. ("Motorola"). You inform us, and provide documentation showing, that the city has notified Motorola of this request and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 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 received correspondence from Motorola and have reviewed the company's arguments and the submitted information.

Initially, we note that Motorola seeks to withhold certain information that the city has not submitted for review.<sup>1</sup> We do not reach Motorola's arguments with regard to information

---

<sup>1</sup>Motorola informs us that it seeks to withhold the following: (i) Data Dictionary Version 3.9.1; (ii) Entity Relationship Diagram Version 3.9.1; (iii) Data Dictionary Version 3.10; and (iv) Entity Relationship Diagram Version 3.10. The city has only submitted to this office a document labeled Data Dictionary Version 3.9.1.

that has not been submitted for our review by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting a decision from Attorney General must submit a copy of the specific information requested, or representative sample if voluminous amount of information was requested).

We now address Motorola's arguments with respect to the information submitted by the city. Motorola contends that the submitted records are protected as trade secret information. Section 552.110(a) of the Government Code protects the proprietary interests of private parties by excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision[.]"<sup>2</sup> *See* Gov't Code § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, 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 also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). If the governmental body takes no position on the application of the "trade secrets" component of section 552.110 to the information at issue, this office will accept a private party's claim for exception as valid under that component if that party establishes a *prima facie* case for the exception, and no one submits an argument that rebuts

---

<sup>2</sup>Motorola contends that the company's information is excepted from disclosure under section 552.101 of the Government Code as confidential information, on the basis that the information constitutes trade secrets of the company. This argument is properly asserted under section 552.110(a) of the Government Code, the exception under the Act providing that trade secrets are excepted from required public disclosure. As Motorola has provided no arguments contending that any of the information at issue is otherwise excepted from disclosure under section 552.101, we address the company's trade secret argument pursuant to section 552.110(a).

the claim as a matter of law.<sup>3</sup> See Open Records Decision No. 552 at 5 (1990). The private party must provide information that is sufficient to enable this office to conclude that the information at issue qualifies as a trade secret under section 552.110(a). See Open Records Decision No. 402 at 3 (1983).

Having reviewed Motorola's arguments and the submitted information, we find that the company has established a *prima facie* case that the information at issue constitutes trade secret information for purposes of section 552.110(a). We have not received any arguments that rebuts the company's claim as a matter of law. Therefore, the city must withhold the submitted information pursuant to section 552.110(a) of the Government Code.

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

---

<sup>3</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (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).

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 233739

Enc. Submitted documents

c: Mr. Jeremy Rogalski  
Investigative Reporter  
KHOU-TV  
1945 Allen Parkway  
Houston, Texas 77019  
(w/o enclosures)

Ms. Doris L. Gray  
Senior Contracts & Compliance Manager  
Motorola, Inc.  
Integrated Solutions Division  
2501 South Price Road, M/D G5116  
Chandler, Arizona 85248  
(w/o enclosures)