



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2006

Ms. Jeanene McIntyre
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2006-13186

Dear Ms. McIntyre:

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# 262676.

The City of Arlington (the "city") received a request for the architectural drawings, renderings, designs, plans and specifications of the Dallas Cowboys Complex (the "complex"). You do not assert any exceptions to disclosure on behalf of the city. Instead, you state that the release of the submitted drawings and plans may implicate the proprietary interests of certain third parties. Pursuant to section 552.305 of the Government Code, you notified a representative of the Dallas Cowboys of the request and of the 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). A representative for the Cowboys Stadium, L.P. and the Dallas Cowboys Football Club, LTD (collectively, the "Cowboys") responded to your notification by arguing that the submitted drawings and plans are excepted from disclosure under sections 552.101, 552.110, and 552.131 of the Government Code. We have considered the arguments and have reviewed the information at issue. We have also considered the comments of members of the public. *See Gov't Code § 552.304* (providing that any interested person may submit written comments stating reasons why information at issue should or should not be released).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. The Cowboys 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.” *Id.* § 418.181. Additionally, the Cowboys raise section 418.182 which provides in part that certain information in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential. *See id.* § 418.182.

The fact that information may relate to the security concerns of a governmental body or a private entity does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). A governmental body or third party asserting sections 418.181 and 418.182 must adequately explain how the responsive records fall within the scope of those provisions. *See generally* Gov’t Code § 552.301(e)(1)(A). In this instance, the Cowboys assert that all American sporting venues are attractive targets to terrorists. In support of its claim, the Cowboys refer us to a specific news article in which the Federal Bureau of Investigations warns stadium operators of possible suicide bomb attacks at sporting events.¹ The Cowboys also refer us to a report issued by the Office of Homeland Security that advocates the protection of individual targets whose destruction would profoundly damage our nation’s morale and confidence.² The Cowboys further claim that due to certain characteristics of this project, the complex is a unique target among stadiums. Based on the Cowboy’s representations and our review of the supporting documentation, we find that the complex is “critical infrastructure” for the purposes of section 418.181. *See generally id.* § 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).

Although it has been demonstrated that the complex constitutes “critical infrastructure,” we must still determine whether the submitted plans and drawings will “identify the technical details of particular vulnerabilities” of the complex to an act of terrorism. The Cowboys argue that information relating to structural and mechanical components, including air ducts,

¹ Brian Ross, *Exclusive: FBI Warns of Possible Terror Threat at Sporting Events*, ABC News, March 10, 2006, available at <http://abcnews.go.com/WNT/story?id+1711158&page=1>.

² Office of Homeland Security, *National Strategy for Homeland Security* (July, 2002), available at <http://www.whitehouse.gov/homeland/book/sect3-3.pdf>.

utility wiring, and security features” should be protected under section 418.181. The submitted documents do not, however, reveal such information. The plans and drawings are very preliminary in nature and contain very little detailed information. Thus, after reviewing the actual documents, we are not persuaded that these plans and drawings reveal technical details about the complex’s vulnerabilities. We also note that the Cowboys did not submit any arguments explaining their claim under section 418.182. Accordingly, the Cowboys have failed to demonstrate the applicability of the Texas Homeland Security Act to the submitted information.

The Cowboys also claim that the requested information is excepted under section 552.131, which provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(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.

Id. § 552.131. This exception protects “information [that] relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body.” *See id.* The Cowboys acknowledge that they entered into a lease with the city in September 2005. The Cowboys argue, however, that they are still engaged in “on-going negotiations” with various parties regarding the lease agreement and its numerous amendments. The records at issue are the plans and drawings of the complex, not the lease and its amendments. Thus, even if the Cowboys were, at the time of this request, still a “business prospect” for purposes of section 552.131, they failed to provide any explanation of how the requested plans and drawings are the subject of “economic development negotiations.” Accordingly, none of the submitted information may be withheld under section 552.131.

Finally, we consider the Cowboys’ contention that the submitted drawings and plans are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(a), (b).

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). We cannot conclude that section 552.110(a) is applicable, however, 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).

Although the Cowboys submitted arguments regarding the necessary factors, this office did not receive any comments explaining how the submitted drawings and plans meet the definition of a trade secret. In fact, the Cowboys repeatedly state that the drawings and plans are unique to this project. As previously stated, a trade secret is a process or device for continuous use in the operation of the business; it is not information as to a single or ephemeral event. *See* RESTATEMENT OF TORTS § 757 cmt. b (1939). Because the submitted plans and drawings relate solely to this project, we conclude that they are not trade secrets under section 552.110(a).

Section 552.110(b) protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999). After reviewing their arguments and the information at issue, we find that the Cowboys have failed to demonstrate how the release of these plans and drawings will cause substantial competitive harm. Accordingly, the plans and drawings are not excepted under section 552.110(b) and 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the 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

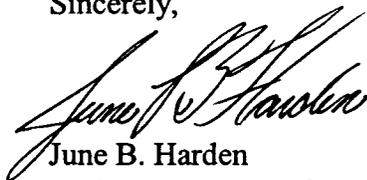
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 262676

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