



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 5, 2008

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi Legal Department  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2008-12246

Dear Mr. Bounds:

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# 321813.

The City of Corpus Christi (the "city") received a request for building permit and construction documents pertaining to permit numbers 0700008861, 0700010307, 0700010308, 0700009189, and 0700010665.<sup>1</sup> We note that the requestor has withdrawn her request for information related to building permit number 0700006284. You state that you have released some of the requested information. You claim that a portion of the submitted information is excepted from disclosure under sections 552.130 and 552.137 of the Government Code. As to the remaining information, you take no position, but state that its release may implicate the proprietary interests of third parties. You state, and provide documentation showing, that you have notified the interested third parties of the request and

---

<sup>1</sup>We note that the requestor excluded from her request social security numbers, driver's license numbers, geological information, and certain financial information found in certain types of documents. Accordingly, any such information is not responsive to the request and need not be released to the requestor.

of each company's opportunity to submit arguments to this office.<sup>2</sup> See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from representatives of Spohn, Alter, and Richter. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has only received comments from Spohn, Alter, and Richter. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to the other notified third parties would implicate their proprietary interests. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Thus, the city may not withhold any of the information pertaining to the other notified third parties based on the proprietary interests that these third parties may have in the information.

We note that this office received arguments from representatives of Spohn and Alter regarding the information related to building permit number 0700006284. Because the requestor no longer seeks information related to this specific building permit, we will not address Spohn and Alter's arguments pertaining to this nonresponsive information.

Richter raises section 552.110 of the Government Code for its submitted information. 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. 1957); see also ORD 552 at 2. Section 757 provides that a trade secret is:

---

<sup>2</sup>The interested third parties are: O'Reilly Auto Parts Store; Esterly Schneider & Associates, Inc. AIA; Smith-Goth Engineering, Inc.; J.S. Smith Consulting Engineers; MO Anderson Engineering, Inc.; Butler Manufacturing; The Alter Group ("Alter"); CHRISTUS Spohn Healthsystem ("Spohn"); Marmon Mok Architects; Dunam Design Group; Lundy Franke Engineering; Clearly Zimmerman Engineers; Mr. Roberto Sanchez; Mr. Herm Sanchez; Candlewood Annex; Impact Building Systems; RW Stone Engineer, PLLC; Geotek Engineering; McAlister's Corporation; Southwest Deli Group; Qual Serve; CoCo & CoCo; Gessner Engineering; Urban Engineering; Tyler/Corpus Development Partners, LP; Landgraf, Crutcher & Associates; HEB Facility Delivery; Kleberg Bank; Richter Architects ("Richter"); Callins & Associates; and Mr. Rusty Van Fleet.

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); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

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* ORD 232. 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. ORD 552. 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). Information is generally not a trade secret if it is "simply information as to single or ephemeral events in the conduct of the business" rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt.b (1939).

Section 552.110(b) excepts from disclosure "[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Richter claims that its plans and specifications are excepted from public disclosure under section 552.110(a) as trade secrets. Upon review, we find that Richter has failed to demonstrate that any of the information at issue meets the definition of a trade secret or demonstrate the necessary factors to establish a trade secret claim. Accordingly, the city may not withhold any of the information at issue under section 552.110(a) of the Government Code. Furthermore, we find that Richter has made only conclusory allegations that release of the its plans and specifications would cause it substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. Thus, we find Richter has failed to establish that the information at issue is excepted under section 552.110(b) of the Government Code. Accordingly, no portion of the information at issue may be withheld under section 552.110 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Upon review, we find the city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137 (a)-(c). You have marked personal e-mail addresses in the submitted documents that are subject to section 552.137. The e-mail addresses are not a type specifically excluded by section 552.137(c). You inform us that the owners of the e-mail addresses have not affirmatively consented to their public disclosure. We therefore conclude that the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

We also note that portions of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the Texas motor vehicle record information and e-mail addresses you have marked under sections 552.130 and 552.137 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

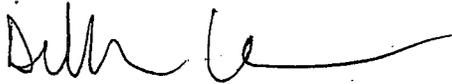
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/eeg

Ref: ID# 321813

Enc. Submitted documents

c: Ms. Jeri L. S. Morey  
711 North Carancahua, #518  
Corpus Christi, Texas 78475  
(w/o enclosures)

Mr. Robert Green  
Director of Real Estate Legal Services  
O'Reilly Auto Parts Store  
233 South Patterson  
Springfield, Missouri 65802  
(w/o enclosures)

Mr. Craig A. Schneider  
Esterly Schneider & Associates, Inc. AIA  
318 Park Central East, Suite 310  
Springfield, Missouri 65806-2214  
(w/o enclosures)

Mr. David Smith, P.E.  
Smith-Goth Engineering, Inc.  
3855 South Jefferson Avenue  
Springfield, Missouri 65807  
(w/o enclosures)

Mr. Norman Goth, P.E.  
Smith-Goth Engineering, Inc.  
3855 S. Jefferson Avenue  
Springfield, MO 65807  
(w/o enclosures)

Mr. Jeffery S. Smith  
J. S. Smith Consulting Engineers  
P.O. Box 8102  
Joplin, Missouri 64802  
(w/o enclosures)

Mr. Aaron D. Smith, P.E.  
J. S. Smith Consulting Engineers  
P.O. Box 8102  
Joplin, Missouri 64802  
(w/o enclosures)

Mr. William Bruce Rhodes  
MO Anderson Engineering, Inc.  
2045 Woodland  
Springfield, Missouri 65802  
(w/o enclosures)

Mr. Steven G. Garbs  
Butler Manufacturing  
1540 Genessee  
Kansas City, Missouri 64102  
(w/o enclosures)

Mr. Ronald Siegel  
Chief Financial Officer  
The Alter Group  
5500 West Howard Street  
Skokie, Illinois 60077  
(w/o enclosures)

Mr. Bruce Holstien  
CEO/President  
CHRISTUS Spohn Healthsystem  
1702 Santa Fe  
Corpus Christi, Texas 78404  
(w/o enclosures)

Mr. Carlos Moreno  
Associate Partner  
Marmon Mok Architects  
One Riverwalk Place  
700 N. St. Mary's, Suite 1600  
San Antonio, TS 78205  
(w/o enclosures)

Ms. Margaret Dunam  
Dunam Design Group  
501 South Tanchua Street, Suite 4  
Corpus Christi, Texas 78401  
(w/o enclosures)

Mr. Shawn Franke  
Lundy Franke Engineering  
549 Heimer, Suite 360  
San Antonio, Texas 78232  
(w/o enclosures)

Mr. Danny Zimmerman  
Clearly Zimmerman Engineers  
1344 South Flores, Suite 200  
San Antonio, Texas 78204  
(w/o enclosures)

Mr. Roberto Sanchez  
4001 Sarita  
Corpus Christi, Texas 78416  
(w/o enclosures)

Mr. Herm Sanchez  
4001 Sarita  
Corpus Christi, Texas 78416  
(w/o enclosures)

Mr. Robert Sanchez  
Candlewood Annex  
6338 Holly  
Corpus Christi, Texas 78414  
(w/o enclosures)

Mr. Brent Schumann  
President  
Impact Building Systems  
25836 Highway 281 North  
San Antonio, Texas 78258  
(w/o enclosures)

Mr. Raymond W. Stone  
R W Stone Engineer, PLLC  
2072 FM 2725  
Ingleside, Texas 78362  
(w/o enclosures)

Geotek Engineering  
1135 West Woodlawn  
San Antonio, Texas 78201  
(w/o enclosures)

Mr. Patrick Walls  
General Counsel  
McAlister's Corporation  
731 South Pearl Orchard Road, Suite 51  
Ridgeland, Mississippi 39157  
(w/o enclosures)

Mr. Larry Lee  
Southwest Deli Group  
3501 Billy Hext Road  
Odessa, Texas 79765  
(w/o enclosures)

Mr. Rick Heller, CEO  
Qual Serve  
1222 Ozark  
Kansas City, Missouri 64116  
(w/o enclosures)

Mr. Ronald Ashley CoCo  
CoCo & CoCo  
619 West Texas Avenue, Suite 100  
Midland, Texas 79701  
(w/o enclosures)

Mr. Thomas E. Gessner  
Gessner Engineering  
1712 Southwest Parkway, Suite 105  
College Station, TX 77840  
(w/o enclosures)

Mr. Larry Urban, P.E., R.P.L.S.  
Urban Engineering  
2725 Swanter  
Corpus Christi, Texas 78404  
(w/o enclosures)

Mr. Chuck Urban, P.E.  
Urban Engineering  
2725 Swanter  
Corpus Christi, TX 78404  
(w/o enclosures)

Mr. Jim Urban, P.E.  
Urban Engineering  
2725 Swanter  
Corpus Christi, TX 78404  
(w/o enclosures)

Mr. Dan Urban, P.E., R.P.L.S.  
Urban Engineering  
2725 Swanter  
Corpus Christi, TX 78404  
(w/o enclosures)

Mr. Larry G. Lee  
Tyler/Corpus Development Partners, LP  
Leeco Properties  
500 West Illinois Avenue, Suite 240  
Midland, Texas-79701  
(w/o enclosures)

Mr. John F. Landgraf  
Landgraf, Crutcher & Associates  
521 North Texas Ave, Lobby  
Odessa, Texas 79761-5131  
(w/o enclosures)

Mr. Thomas R. Schlegel  
Landgraf, Crutcher & Associates  
521 North Texas Avenue, Lobby  
Odessa, Texas 79761-5131  
(w/o enclosures)

Mr. Oscar Pena  
HEB Facility Delivery  
Construction Project Leader  
946 Quintana Road  
San Antonio, Texas 78224  
(w/o enclosures)

Ms. Betty Taylor  
HEB Facility Delivery  
Construction Project Leader  
946 Quintana Road  
San Antonio, Texas 78224  
(w/o enclosures)

Ms. Jackie Ilse  
Kleberg Bank  
P.O. Box 911  
Kingsville, Texas 78364  
(w/o enclosures)

Mr. David R. Richter  
Richter Architects  
201 South Upper Broadway  
Corpus Christi, Texas 78401  
(w/o enclosures)

Mr. Scott Stridde  
Callins & Associates  
P.O. Box 4146  
Corpus Christi, TX 78469  
(w/o enclosures)

Mr. Rusty Van Fleet  
1407 South 6<sup>th</sup> Street  
Kingsville, Texas 78363  
(w/o enclosures)