



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 6, 2011

Ms. Rebecca Brewer  
Attorney for City of Frisco  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2011-09550

Dear Ms. Brewer:

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# 422821.

The City of Frisco (the "city"), which you represent, received two requests from different requestors for the plans and specifications of a specified building. The first requestor additionally seeks the name of the architects and engineers that prepared the construction drawings, the name of the general contractor, all permits issued regarding the building, and city inspection reports pertaining to the property. Although you raise no exceptions to disclosure of the submitted information, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified Holiday Inn Glen Brook Lodging, Dowdy Anderson Association, B.H. Hudson Engineers and Assoc. ("Hudson"), Leeming Design Group, Waheed Engineering, and Blue Star Allen Land of this request and of their right to submit arguments to this office explaining why their information should not be released. *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 certain circumstances). We have received comments from Hudson. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

An interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, none of the remaining third parties have submitted comments to this office explaining why any portion

of the requested information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the proprietary interests of the remaining third parties, and none of the information may be withheld on that basis. *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).

We understand Hudson to raise section 552.110(a) of the Government Code for the submitted information. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Record Decision No. 552 (1990). Section 757 defines 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 Huffines*, 314 S.W.2d at 776. This office will accept a private person’s claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.<sup>1</sup> Open Records Decision No. 402 (1983).

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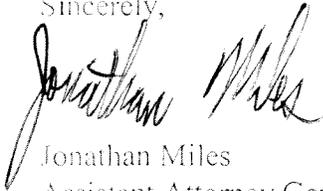
<sup>1</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company’s] business; (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; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Hudson asserts the submitted project construction drawings constitute trade secrets that are confidential under section 552.110(a). We note, however, information pertaining to a particular contract is generally not a trade secret because 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); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3. Hudson states the documents at issue reveal design decisions unique to this particular project. Further, the information at issue indicates it was created or prepared for use for this project only. Thus, we conclude Hudson has failed to make a *prima facie* showing that any of the information it seeks to withhold meets the definition of a trade secret nor has Hudson established the necessary factors to establish a trade secret claim for this information. Accordingly, the city may not withhold any of the submitted information under section 552.110(a). As you raise no further exceptions, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 422821

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Mark Wyant  
Holiday Inn Glen Brook Lodging  
7151 Hill Forest Drive  
Dallas, Texas 75230  
(w/o enclosures)

Waheed Engineering  
6605 Beryl Drive  
Arlington, Texas 76002  
(w/o enclosures)

Leeming Design Group  
4913 Rufe Snow  
North Richland Hill, Texas 76180  
(w/o enclosures)

Blue Star Allen Land  
Building 100, Suite 100  
8000 Warren Parkway  
Frisco, Texas 75034  
(w/o enclosures)

B.H. Hudson Engineers and Association  
132 East Main Street #200  
Grand Prairie, Texas 75050  
(w/o enclosures)

Dowdy Anderson Association  
5225 Village Creek, Suite 200  
Plano, Texas 75093  
(w/o enclosures)