



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2014

Mr. Jason M. Rammel  
Counsel for the City of Hutto  
Sheets & Crossfield, PC  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2014-13715

Dear Mr. Rammel:

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# 532547.

The City of Hutto (the "city"), which you represent, received a request for documents allowing Home Depot U.S.A., Inc. ("Home Depot") to be exempt from a specified ordinance and any documents "allowing downtown merchants to publicly display items differently than what ordinance allows." Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Home Depot. Accordingly, you state you notified Home Depot of the request for information and of its right to submit arguments to this office as to why the submitted 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 the Act in certain circumstances). We have received comments from Home Depot. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to Home Depot. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, Home Depot argues its information is not responsive to the request for information. A governmental body must make a good-faith effort to relate a request to information that

is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the city has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find the city has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the information at issue is responsive to the request and will determine whether the city must release the information at issue to the requestor under the Act.

Section 552.110 of the Government Code 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. Gov't Code § 552.110. 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 trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *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); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that

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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 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).

information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. See ORD 552 at 5. 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).

Home Depot contends the submitted design drawings and blueprints constitute a trade secret. Home Depot explains the information at issue is used in building other stores. Upon review of Home Depot's arguments and the submitted information, we find Home Depot has demonstrated the submitted design drawings and blueprints constitute a trade secret. See *Taco Cabana Int'l v. Two Pesos, Inc.*, 932 F.2d 1113, 1123-25 (5th Cir. 1991), *aff'd*, 505 U.S. 763 (1992); see also *Ecolaire Inc. v. Crissman*, 542 F. Supp. 196, 206 (E.D. Pa.1982) (drawings, blueprints and lists constitute trade secrets because such information could be obtained, through other than improper means, only with difficulty and delay); *American Precision Vibrator Co. v. Nat'l Air Vibrator Co.*, 764 S.W.2d 274, 278 (Tex. App.—Houston [1st Dist.] 1988, no writ) (blueprints, drawings, and customer lists constitute trade secrets). Accordingly, the city must withhold the submitted information under section 552.110(a) of the Government Code.<sup>2</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure.

Ref: ID# 532547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Home Depot USA  
c/o Ms. Emma C. Mata  
Seyfarth Shaw LLP  
770 Milam Street, Suite 1400  
Houston, Texas 77002  
(w/o enclosures)