



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

August 5, 1975

The Honorable John C. White
Commissioner of Agriculture
P. O. Box 12847
Austin, Texas 78711

Open Records Decision No. 107

Re: Whether inventory information
from grain warehouse reports of the
Department of Agriculture is public
under the Open Records Act.

Dear Commissioner White:

You have requested our decision regarding whether inventory information which appears on grain warehouse reports made by the Department of Agriculture is public under the Open Records Act, article 6252-17a, V. T. C. S.

The Commissioner of Agriculture is required by the Texas Grain Warehouse Act to conduct at least "one annual examination" of every licensed grain warehouse in Texas, V. T. C. S., art. 5577⁶, sec. 12(c). In the course of such an inspection, the Commissioner obtains information as to both the type and quantity of grain stored in a particular warehouse. You contend that such inventory information is excepted from disclosure under sections 3(a)(4) and 3(a)(10) of the Open Records Act.

Based on your knowledge of the business practices in this area, you state that this is a highly competitive business and that information relating to current warehouse inventories are a key factor in the business. You have determined that disclosure of this information could cause substantial harm to the competitive position of the person from whom the information is obtained.

Section 3(a)(4) of the Open Records Act excepts:

information which, if released, would give advantage
to competitors or bidders. . . .

Section 3(a)(10) excepts:

trade secrets and commercial or financial information
obtained from a person and privileged or confidential by
statute or judicial decision. . . .

We have not previously decided whether business inventory information is excepted from required public disclosure. There is no specific statutory restriction on disclosure of these particular reports. We have found no Texas case which has decided the issue. However, the section 3(a)(10) exception is patterned after an almost identical provision in the Federal Freedom of Information Act which exempts "trade secrets and commercial or financial information obtained from any person and privileged or confidential." 5 U. S. C. 552(b) (4). When the legislature adopts language from another jurisdiction it is presumed that the legislature intended it to have the same meaning. State v. Weiss, 171 S. W. 2d 848, 851 (Tex. Sup. 1943); Attorney General Opinion H-436 (1974).

The legislative history of the federal provision on which our section 3(a)(10) is patterned makes it clear that inventories were intended to be included within this exception. The House Report accompanying the legislation notes that this exception:

. . . exempts such material if it would not customarily be made public by the person from whom it was obtained by the Government. The exemption would include business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiation positions or requirements in the case of labor-management mediations. House Report No. 1497, 89th Cong., 2d Sess. 10 (1966), U. S. Code Cong. & Adm. News 2418, 2427 (emphasis added).

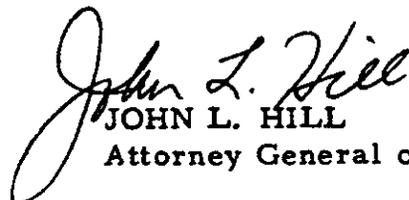
The Senate Report also specifically states that inventories are included within the exception. Senate Report No. 813, 89th Cong., 1st Sess. 9 (1965), cited in Petkas v. Staats, 364 F. Supp. 680, 683 (D. D. C. 1973), rev. & rem., 501 F. 2d 887 (D. C. Cir. 1974).

When the Texas Open Records Act was enacted, a federal district court had decided that certain business records, including inventories, were exempted from disclosure under 5 U. S. C. § 552 (b)(4). National Parks and Conservation Association v. Morton, 351 F. Supp. 404 (D. D. C. 1972), rev. & rem., 498 F. 2d 765 (D. C. Cir. 1974). The reversal of this case cast no doubt on the trial court's determination that the information involved was the type which could be exempted, but since the parties from whom the information was obtained held monopoly concessions in federal parks, the Court of Appeals remanded for an additional determination on the likelihood that disclosure could harm their competitive position.

Another case decided prior to adoption of the federal language by the Texas Act had held that sales and profit data, breakdown of sales, and cost and profit information by product and customer classification came within the scope of the federal exemption. Sterling Drug, Inc. v. Federal Trade Commission, 450 F. 2d 698 (D. C. Cir. 1971).

On the basis of the virtually identical language in the federal and Texas acts, the express statements of intention to include inventory information found in the legislative history of the federal act, and the federal court decisions applying the federal exception to this type of information and on the facts as presented, it is our decision that the inventory information requested here is excepted from required disclosure under section 3(a)(10) of the Open Records Act. In view of our determination, we need not address the applicability of section 3(a)(4).

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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