



**THE ATTORNEY GENERAL
OF TEXAS**

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May 15, 1990

Mr. Robert P. Rose
Assistant City Attorney
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-8828

Open Records Decision No. 554

Re: Availability under the
Open Records Act, article
6252-17a, V.T.C.S., of infor-
mation about hazardous materi-
als used by private companies
to manufacture semiconductors
(RQ-1516)

Dear Mr. Rose:

The City of Austin received a request under the Open Records Act, V.T.C.S. art. 6252-17a, for the following documents:

Permits issued to Motorola, Inc. under the Hazardous Materials Storage and Registration Ordinance, and

Permits issued to Advanced Micro Devices, Inc., under the Hazardous Materials Storage and Registration Ordinance.

The city has assumed that the request for "permits" constitutes a request for the permit applications. Both companies are engaged in the manufacture of semiconductors, and the applications list the chemicals used to manufacture, assemble, test, and mark semiconductors. A brief submitted in connection with this request states that the purpose of the Hazardous Materials Storage and Registration Ordinance was to alert fire fighters in emergency situations to the storage locations for potentially hazardous chemicals. It also states that the ordinance relies upon businesses to comply voluntarily by registering their hazardous materials inventories. The applicant must give the location of each storage area for hazardous materials and list the kind and maximum quantity of hazardous materials at each storage location.

The two companies have submitted briefs asserting that some portions of the permit applications are confidential under the Open Records Act. The remaining information has been made available to the requestor. Motorola raises a claim of confidentiality for the following information:

- (1) plant design and layout;
- (2) chemical storage area locations;
- (3) chemical storage volumes;
- (4) certain specific chemical identities;
- (5) emergency response employee information.

Motorola states that these portions of its application are excepted from disclosure under the Open Records Act by sections 3(a)(1), 3(a)(4), and 3(a)(10). Advanced Micro Devices raises a claim of confidentiality for information about the types, quantities, and physical location of chemicals it uses. The company argues that portions of its application forms are excepted by sections 3(a)(4) and 3(a)(10) of the act.

It has also been suggested that the location of chemicals at the plants was excepted from disclosure by the federal Emergency Planning and Community Right-to-Know Act of 1986. 42 U.S.C. §§ 11001-11050. This statute provides for the creation of local emergency planning committees with the duty of preparing plans to handle emergencies involving hazardous substances. Id. § 11001. It requires the filing of certain information about hazardous substances. Id. §§ 11001, 11021, 11022. It also states, however, that nothing in the act shall preempt any state or local law. Id. § 11041. The information in question was submitted under the City of Austin Hazardous Materials Storage and Registration Ordinance, not the federal law. Accordingly, the application information is not subject to the federal law and we need not address it. We turn to the exceptions that have been raised under the Texas Open Records Act.

Motorola claims that release of the names, and home addresses and telephone numbers of employees who are responsible for dealing with an emergency involving hazardous substances will invade their privacy and subject them to calls from the media in the middle of such emergency, interfering with the performance of their duties. It raises section 3(a)(1) of the Open Records Act, which

applies to "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including information made confidential by common-law privacy rights. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Common-law privacy rights prevent the disclosure of information that (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. See Industrial Found. of the South v. Texas Indus. Accident Bd., supra, at 683-685. The disclosure of a person's name, home address, and telephone number is not an invasion of privacy. See Open Records Decision Nos. 532 (1989); 169 (1977). Moreover, Motorola's interest in avoiding media contacts with its employees during an emergency is not a personal privacy interest recognized by section 3(a)(1). It is an interest of the corporation rather than an interest of the employees in their personal privacy. The names of employees are not protected from disclosure by the privacy rights recognized by section 3(a)(1).

Section 3(a)(4) of the Open Records Act provides an exception for

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

This exception protects the government's interests in purchasing by assuring that the bidding process will be truly competitive. See Open Records Decision No. 463 (1987). It requires a showing of harm in a particular competitive situation. Open Records Decision No. 541 (1990); 246 (1980). Since the city's purchasing interests are not at issue in this case, section 3(a)(4) is not applicable.

Section 3(a)(10) excepts from public disclosure

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

The companies claim that the application information reveals their trade secrets, and thus should be protected from disclosure by section 3(a)(10). The Texas Supreme Court has adopted the definition of "trade secret" from the

Restatement of Torts, section 757, which 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

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958): Six factors determine whether particular information will be accorded trade secret status:

- 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 the information;
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

See Restatement of Torts § 757, comment b (1939).

Each company has submitted information explaining why the requested information is a trade secret and the city has provided its evaluation of the trade secret claims. Since this office cannot resolve questions of fact, it has been our practice to rely upon the representations of the governmental body, or those of the business entity that are endorsed by the governmental body, to determine whether the trade secret criteria are satisfied. Open Records Decision

No. 541 (1990); 426 (1985). But see V.T.C.S. art. 6252-17a, § 7(c); Open Records Decision No. 550 (1990) (governmental body is not required to submit to attorney general reasons for raising 3(a)(10) if person claiming trade secret does).

The companies are engaged in the micro-electronic sector of the semiconductor industry. Each has provided information on the competitive nature of this industry, its costs in developing its manufacturing processes, and the uniqueness of its processes. They have described how information about plant design and layout and about the types and quantities of chemicals stored at specific locations in the plant reveal something about the steps of manufacturing microprocessor chips. Both companies identify security measures that limit their employees' knowledge of the manufacturing process and the quantities of particular chemicals stored in specific places and used in specific steps in manufacturing microchips. For example, employees are limited as to the parts of the plant they may be admitted to and the company information they may see. The two companies indicate that knowledge of the identity and quantity of chemicals used at various stages of the manufacturing process would greatly assist a competitor in pirating the design and manufacture of chips, a complex process that would be extremely difficult or impossible otherwise.

The city's letter requesting this decision states as follows:

While Advanced Micro Devices has demonstrated a trade secret interest in the volume and location of chemicals used at their plants, the documents for which they request confidentiality (Exhibit C) are over-inclusive. The City contends that the identities of chemicals commonly used in the business do not constitute trade secrets, and should therefore be disclosed.

Motorola has demonstrated, to the City's satisfaction, a legitimate trade secret interest in the volume and location of chemicals used at their plants. Additionally, Motorola has demonstrated a trade secret interest in the identities of two chemicals. The use of those chemicals is so unusual in this field that merely disclosing

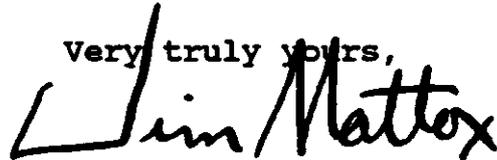
the identities could reveal a process unique to Motorola.

We adopt the city's conclusion that a trade secret interest has been established as to the volume and location of chemicals used at both plants and that Motorola has demonstrated a trade secret interest in the identities of two chemicals. The two companies have demonstrated a trade secret interest in plant design and layout. The documents that reveal this information are excepted from disclosure by section 3(a)(10) of the Open Records Act.

S U M M A R Y

An open records request was made for the permit applications that two companies engaged in manufacturing semiconductors filed under the City of Austin Hazardous Materials Storage and Registration Ordinance. Information about plant design and layout and the volume and location of chemicals used by the companies is excepted from disclosure by section 3(a)(10) of the Open Records Act as trade secret information. In addition, the identities of two chemicals used by one company are excepted from disclosure by section 3(a)(10) as trade secret information. The identities of chemicals commonly used in the business do not constitute trade secrets.

Very truly yours,



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