



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

July 18, 1989

Mr. Robert E. Shaddock
General Counsel
State Department of Highways
and Public Transportation
DeWitt C. Greer State Highway Bldg.
11th & Brazos
Austin, Texas 78701-2483

Dear Mr. Shaddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6528; this decision is OR89-219.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The State Department of Highways and Public Transportation wishes to use manuals on a bid collusion detection system provided by the Information Technology Company. Before the company will release the manuals to the department, however, the company seeks assurances that the manual will not be disseminated under the Open Records Act. You ask whether sections 3(a)(10) and/or 3(a)(8) of the act would protect the manual from required public disclosure.

Section 3(a)(10) protects:

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

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In deciding whether information may be withheld under section 3(a)(10), previous open records decisions rely on the following criteria:

(1) the extent to which the information is known outside 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 its 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; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

See Open Records Decision Nos. 426 (1985); 306 (1982); 255 (1980).

The Information Technology Company submitted to the department an explanation of how the company protects the manual at issue and how the manual meets the six trade secret criteria quoted above. After reviewing the manual and the company's affirmations, we have determined that section 3(a)(10) applies because the criteria have been met. In light of this conclusion, we do not address your claim regarding section 3(a)(8).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-219.

Yours very truly,

Open Government Section 
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

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