



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 16, 1990

Mr. James D. Braddock
Attorney, Legal Division
Texas Air Control Board
6330 Hwy. 290 East
Austin, Texas 78723

OR90-479

Dear Mr. Braddock:

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# 9307.

The Texas Air Control Board (the board) received an open records request for certain information pertaining to the granting of a construction permit to Composite Technology Engine Components (CTEC) in San Marcos, Texas. Although most of the requested information is contained in the "Public" portion of the permit application, which the board released to the requestor, the board sought the opinion of this office, pursuant to section 7(c) of the Open Records Act, as to whether other information contained in the "Confidential" portion of the application should be withheld. This office subsequently invited representatives of CTEC to submit additional arguments regarding the proprietary nature of the unreleased portions of the application.

The president of CTEC has stated his reasons for why the previously unreleased information constitutes trade secrets and therefore comes under the protection of section 3(a)(10) of the Open Records Act. 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.

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex. 1958) (quoting Restatement of Torts, section 757 comment b (1939)); see also Open Records Decision Nos. 255 (1980); 232 (1979); 217 (1978).

There are two specific portions of the "Confidential" portion of the application that CTEC contends are trade secrets. CTEC first contends that a "compound" used as a sealer is a trade secret because "the sealer is an integral part of the process and method of manufacture of the M-23 and M-51 shrouds, and the formula, if released, would give advantage to competitors or bidders."¹ CTEC also contends that portions of **Table 1(a) Emissions Points** constitute trade secrets because they reveal "specific process steps [that] involve the methods of manufacture and production."

Section 381.022 of the Health and Safety Code provides:

A member, employee, or agent of the [Air Control] [B]oard may not disclose information submitted to the board relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.

This, taken together with CTEC's explanation for keeping this information secret, clearly brings the information under the protection of section 381.022. Consequently, you must withhold this information pursuant to sections 3(a)(1) and 3(a)(10) of the Open Records Act.

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 OR90-479.

Yours very truly,

John Steiner by JG
John Steiner
Assistant Attorney General
Opinion Committee

JS/RWP/le

1. Although CTEC also contends that section 3(a)(4) of the Open Records Act protects this information, we note that section 3(a)(4) is intended to protect governmental interests in competitive bidding situations and is therefore inapplicable here.

Ref.: ID# 10699
ID# 9307

cc: Jeffery Stefanoff
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