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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 26, 1991

Ms. Donna M. Atwood
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Drawer DFW
Dallas/Fort Worth Airport, Texas 75261

OR91-342

Dear Ms. Atwood:

On April 15, 1991, we received your request for an open records decision pursuant to section 7 of the Open Records Act, art. 6252-17a, V.T.C.S. Your request was assigned ID # 12198.

Your request relates to Dallas/Fort Worth International (DFW) Airport's contracts for its newly installed computerized parking system, as well as information on all bid procedures, bid information and bid specifications. On May 1, 1991, we wrote representatives of Cerand & Company and Trindel American Corporation, the affected private parties, to inform them that, under the Open Records Act, where a third party's privacy or property interests are implicated, the governmental body may rely on the third party to establish that the information should be withheld. V.T.C.S. art 6252-17a, § 7(c); Open Records Decision No. 542 (1990). We further informed them that if an exception is not claimed or is not supported with specificity, the exception is ordinarily deemed waived unless the information is deemed confidential under the act. See Attorney General Opinion H-436 (1974). We required a response within 14 days. To date, we have received no response from Trindel American Corporation. We received a response from Cerand & Company, dated May 6, 1991, which states, "[W]e do intend to establish that the requested information is within an exception in section 3(a)." Over two months later, however, we have received no further communication from Cerand & Company. Given their failure to respond to our letter within 14 days, the companies have waived their opportunity to do so. Thus, we consider your request solely in light of the arguments in your letter dated April 12, 1991, and Cerand & Company's letter dated May 6, 1991, as well as Cerand & Company's letter to the Attorney General dated May 3, 1991.

The foregoing letters fail to inform us which exceptions apply, to identify the specific records which fall within the exceptions, or to explain why specific

exceptions are applicable. Based on the letters, we conclude that neither DFW nor the relevant third parties have established a *prima facie* case that the subject information is trade secret material protected from disclosure under sections 3(a)(1) and 3(a)(10). Both DFW and Cerand & Company place great reliance on the fact that some documents were provided to DFW with the express understanding that they would be kept confidential. That fact alone, however, is not sufficient to withhold the documents under the Open Records Act. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (material cannot be made confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential). With respect to DFW's suggestion that the requested information is exempt from disclosure under exceptions that relate to governmental interests, we conclude that DFW has failed to demonstrate the basis for its claims and has therefore waived its right to withhold information under any such exemptions.

Based on the foregoing, we conclude that you should release the requested documents at this time. If you have any questions regarding this matter, please refer to OR91-342.

Very truly yours,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/lb

Ref.: ID# 12198

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