



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1991

Ms. Iris J. Jones
Austin City Attorney
P.O. Box 1088
Austin, Texas 78767-8828

OR91-524

Dear Ms. Jones:

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# 13723.

You have received a request for information relating to bid proposals submitted to the City of Austin. Specifically, the request seeks "the responses to Attachment 1-A, Attachment 1-B, Attachment 2, and Attachment 3, Work Force Report, Subcontract Disclosure Form, and responses to Questions 1.0 through 4.11 listed on pages 1 of 20 through 20 of 20 on RFP No. 910597-3LI (Including Amendments) by all the bidding firms . . . that may have quoted to this Solicitation." You ask whether the requested information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(10) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified third parties whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received letters from Datamatic, Inc. and Itron. Datamatic claims that portions of the requested information are excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act. Itron claims that the requested information "is not within the public domain," and constitutes trade secrets, release of which would cause Itron "irreparable harm and damages." Because we have received letters from no other companies to which portions of the requested information might relate, we will limit the scope of this ruling to the claims made by Datamatic and Itron. Information relating to other companies must be released.

We have considered the exceptions these companies have claimed and have examined the documents submitted to us for review. Previous open records decisions issued by this office resolve this request. Open Records Decision No. 541 (1990) at 5 held that "[o]nce the competitive bidding process has ceased and a contract has been awarded, section 3(a)(4) will not except from disclosure either information submitted with a bid or the contract itself." As you have informed us that the competitive bidding process engendering these materials has concluded and the relevant contract has been awarded, neither of the companies may properly invoke a section 3(a)(4) exception.

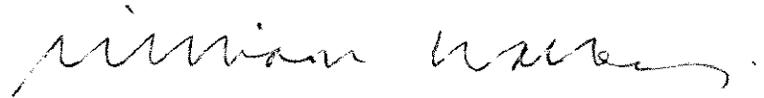
Section 3(a)(10) excepts from required public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In making trade secret determinations under section 3(a)(10), this office will accept a claim as valid if the claimant establishes a *prima facie* case for its assertion of trade secrets that is unrebutted *as a matter of law*. Open Records Decision No. 552 (1990) at 5. Whether a claimant makes a *prima facie* case depends on whether its arguments, as a whole, correspond to the criteria for trade secrets detailed in the Restatement of Torts and adopted by the Texas courts. *Id.* at 2-3.

Datamatic claims that pages 32 through 49 of the System Test Plan of their proposal to the City of Austin is confidential and proprietary. Pages 32 through 49 contain information related to the design and function of system software. Datamatic has demonstrated that release of the requested information would substantially damage its competitive position. Datamatic advises us that software is provided to users only under the terms and conditions of a comprehensive license agreement which restricts disclosure of the information. Datamatic also forbids employees and contractors from disclosing the proprietary information pursuant to confidentiality and nondisclosure agreements. Furthermore, Datamatic asserts that "[the] features and functions included in the subject material were developed by Datamatic over the past ten years and have been discovered or refined as a result of thousands of man-hours in market research and software development." We conclude that Datamatic has made the requisite *prima facie* case for the portions of the requested information for which it claims trade secret protection. See Open Records Decision No. 552. Accordingly, we conclude that the information for which Datamatic claims exception may be excepted from required public disclosure by section 3(a)(10).

Itron, however, does not make such a *prima facie* case. In fact, Itron's argument for nondisclosure is limited to a conclusory statement that the requested information is proprietary and confidential without demonstrating how the requested information constitutes a trade secret or corresponds to the criteria detailed in the Restatement of Torts. We conclude, therefore, that information which relates to Itron may not be withheld from required public disclosure under section 3(a)(10).

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 OR91-524.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GK/lcd

Ref.: ID#s 13723, 13859, 13868, 13898

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