



Office of the Attorney General
State of Texas

August 7, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Diana L. Granger
City Attorney
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-8828

OR92-460

Dear Ms. Granger:

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# 16628.

You have received a request for information relating to a Request for Proposal issued by the City of Austin (the "city") Health Department which has resulted in a contract with Southwestern Bell Telecom (SBT). Specifically, the requestor seeks five categories of information for Request for Proposal Number 920254-3VC:

1. Southwestern Bell Telecom's Itemization and pricing for East Austin Health Center and Rosewood-Zaragosa Health Center.
2. Southwestern Bell Telecom's response to this Request for Proposal.
3. The Health Department's financial and technical evaluation as it pertains to a vendor's measurement of compliance with specifications.
4. Hierarchical rankings, by price, of all bids.
5. The Health Department's minutes of the evaluation committee's meeting to discuss bids in addition to any written evaluation that may exist.

You have submitted to us for review SBT's proposal. You contend that release of SBT's proposal is excepted from required public disclosure by Open Records Act sections 3(a)(1) and 3(a)(10). However, you do not comment on information requested in items 3, 4, and 5, nor have you submitted documents responsive to those items. Consequently, we are unable to determine whether city records produced as a result of or in association with SBT's proposal implicate third-party interests. Accordingly, we limit our determination to the information submitted to us for review and assume information responsive to items 3, 4, and 5 has been or will be made available to the requestor unless otherwise prohibited by law. See Open Records Decision No. 363 (1983).

Pursuant to section 7(c) of the act, we have notified the third-party whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received a letter from SBT. SBT contends that release of information responsive to items 1, 2, 3, and 5 would reveal trade secrets. SBT does not object to release of information responsive to item 4. SBT also claims that the requested information is excepted from required public disclosure by Open Records Act section 3(a)(4).

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 541 (1990). Neither the city nor SBT indicate how the requested information relates to a non-concluded competitive bidding situation or to a commercial transaction to which the city is a party. Accordingly, the section 3(a)(4) exception does not apply.

Section 3(a)(10) excepts from required public disclosure two types of information: 1) trade secrets, and 2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. SBT claims that the requested information constitutes a trade secret. The Texas Supreme Court has adopted the following definition of trade secret from the Restatement of Torts, section 757 as

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, or a list of customers.

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- 1) the extent to which the information is known outside [the company];
- 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 [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.

RESTATEMENT OF TORTS § 757 cmt. b (1939). These factors are indicia of whether information constitutes a trade secret. Depending on the information being considered, one factor alone may be indicative of a trade secret. *See* Open Records Decision No. 552 at 3.

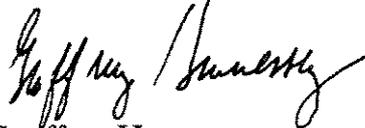
SBT advises that release of the requested information would reveal its pricing formula and the unique technical solutions offered to meet the specific telecommunications needs of the city. SBT advises that its employees are required to sign a non-disclosure agreement. Consequently, the requested information is not known outside of SBT and is known only by SBT technicians and other employees directly involved in the field. SBT asserts that maintaining the confidentiality of the requested information is vital to success in the marketplace, that both time and

money have been expended in training technicians to design the technical solutions, and that competitors could duplicate the requested information only with difficulty.

We have considered SBT's arguments and examined the documents submitted to us for review. SBT has demonstrated that the requested information meets the six criteria listed in the Restatement of Torts, *supra*. Accordingly, we conclude that SBT has made a *prima facie* case for establishing a trade secret. The requestor has not rebutted SBT's showing. See Open Records Decision No. 552. Accordingly, you may withhold the requested information pursuant to Open Records Act 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 OR92-460.

Yours very truly,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/GCK/lmm

Ref.: ID# 16628
ID# 16698
ID# 16763
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