



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 29, 1993

Ms. Susan Owen  
Staff Attorney, Legal Division  
Texas Air Control Board  
12124 Park 35 Circle  
Austin, Texas 78753

OR93-084

Dear Ms. Owen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.<sup>1</sup> Your request was assigned ID# 17754.

The Texas Air Control Board (the "board") has received a request for information concerning GNB, Inc. ("GNB"). Specifically, the requestor seeks all documents in the possession of the board concerning the GNB facilities in Farmers Branch and Frisco, Texas. You have submitted to us for review:

A submission dated November 2, 1990 concerning Permit Application No. 6656A for GNB, Incorporated, Farmers Branch, by Waid and Associates, pages 42 thru 52.

An 8-page submission received by the TACB on July 27, 1992 for Permit Application 6656 for GNB, Incorporated, Farmers Branch.

An 8-page submission for Permit Application No. 6656 for GNB, Incorporated, Farmers Branch [amending the July 27, 1992, submission].

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<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

You claim that these documents are excepted from required public disclosure by section 552.110 of the Open Records Act.

Pursuant to section 552.305 of the act, we have notified GNB and have solicited arguments in support of your assertion that the requested information is excepted from required public disclosure by section 552.110. In response, we have received a letter from GNB. GNB claims that the documents submitted to us for review are excepted from required public disclosure by section 552.110 of the act. Because neither you nor GNB claim that the remainder of the requested information is excepted from required public disclosure under section 552.110 or under any other exception to required public disclosure, we presume that the remaining documents responsive to the request have been or will be made available to the requestor. *See* Open Records Decision No. 409 (1984); *see also* Open Records Decision No. 363 (1983).

Section 552.110 protects the property interests of private persons by excepting 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. Commercial or financial information is excepted under section 552.110 only if it is privileged or confidential under the common or statutory law of Texas. Open Records Decision No. 592 (1991) at 9.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *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. Section 757 provides that a trade secret is

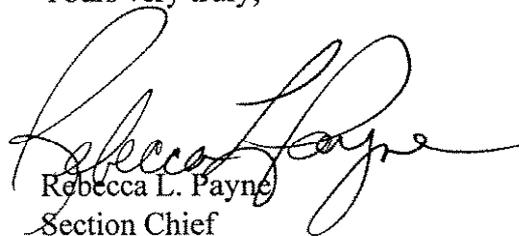
any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business. . . .* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]

This office has previously held that if a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.<sup>2</sup>

The information submitted to us for review generally depicts process descriptions and diagrams of GNB's storage battery plants in Farmers Branch and Dallas. We have considered GNB's arguments and its application of the six Restatement criteria, and have examined the documents submitted to us for review. We conclude that GNB has established a *prima facie* case that the documents constitute trade secrets. Accordingly, we conclude that the documents submitted to us for review must be withheld from required public disclosure under section 552.110 of the 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 OR93-084.

Yours very truly,



Rebecca L. Payne  
Section Chief  
Open Government Section

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

- (1) the extent to which the information is known outside of [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.

*Id.*; see also Open Records Decision Nos. 319, 306 (1982); 255 (1980). When an agency or company fails to provide relevant information regarding factors necessary to make a 552.110 claim, there is no basis to withhold the information under section 552.110. See Open Records Decision No. 402 (1983).

RLP/rho

Ref.: ID# 17754

cc: Mr. Craig B. Simonsen  
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(w/o enclosures)