



Office of the Attorney General
State of Texas

June 29, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Rodman C. Johnson
Staff Attorney
Legal Division
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753

OR93-342

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19004.

The Texas Air Control Board (the "board") received a request for copies of all investigations that resulted in charges filed against Hercules Offshore Co. ("Hercules"). You state that Hercules has requested that the board not disclose the information because it contains trade secrets excepted from disclosure by section 3(a)(10). Pursuant to section 7(c), we solicited a brief from Hercules; however, we did not receive a response. Although Hercules, in a facsimile dated April 13, 1993, requested an extension of the time in which to respond to our request for a brief until April 19, 1993, we did not receive any additional correspondence from them.

Section 3(a)(10) excepts from public disclosure either trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. This exception protects the property interests of third parties recognized by the courts. Open Records Decision No. 319 (1982). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts' definition of a trade secret. The following criteria determine whether information constitutes a trade secret:

- (1) the extent to which the information is known outside [the owner's] business;
- (2) the extent to which it is known by employees and others involved in [the owner's] business;
- (3) the extent of measures taken by [the owner] to guard the secrecy of the information;
- (4) the value of the information to [the owner] and to [its] competitors;
- (5) the amount of effort or money expended by [the owner] in developing the information;
- (6) the ease or

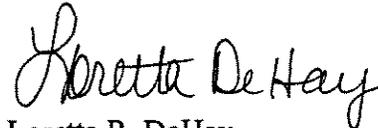
difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 552 (1990).

We must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5. However, when a company fails to provide any evidence of the factors necessary to establish a trade secret claim, we cannot conclude that section 3(a)(10) applies. Open Records Decision No. 402 (1983). We have not received any information establishing a *prima facie* case that the requested information is a trade secret. Accordingly, you must disclose the requested information in its entirety.

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 contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/KKO/jmn

Ref.: ID# 19004
ID# 19065
ID# 19798

Enclosures: Submitted Documents

cc: Mr. Ron Gaines
Fire Marshal
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(w/o enclosures)