



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 2, 1993

Mr. Terry G. Salem
Texas Air Control Board
Legal Division
12124 Park 35 Circle
Austin, Texas 78753

OR93-413

Dear Mr. Salem:

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# 19241.

The Texas Air Control Board (the "board") has received a request for information concerning an E.I. duPont de Nemours & Co., Inc. facility in San Patricio County. You claim that the documents submitted for our review are excepted from public disclosure by section 3(a)(10) of the Open Records Act.

Section 3(a)(10) excepts "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939). *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). A trade secret

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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.

RESTATEMENT OF TORTS § 757 cmt. b (1939). There are six factors listed by the Restatement which should be considered when determining whether information is a trade secret:

(1) the extent to which the information is known outside of [the company's] business; (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 to [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.

We have received a response from a representative of E.I. duPont de Nemours & Co., Inc. ("duPont") concerning the request for information. DuPont claims that section 3(a)(10) protects the following information from public disclosure: 1) the plant plot plan; 2) emissions calculations and rates; 3) air pollution abatement devices; 4) process flow diagrams; 5) process descriptions; 6) material balances; 7) certain material safety data sheets; and 8) safety review for catastrophic events.

DuPont asserts that 1) the technical details of the requested information have never been made known outside of the company; 2) the information is divulged to employees on a strict need-to-know basis with detailed procedures on keeping the information confidential; 3) the value of the information to duPont is in the range of hundreds of millions of dollars; 4) since 1986, the company has invested well in excess of \$50,000,000 in research and development of the information; and 5) the information would be very difficult for another company to duplicate. DuPont has also submitted a detailed explanation of the exhaustive measures taken within the company to guard the confidentiality of the requested information.

We have reviewed duPont's arguments and the information submitted for our consideration. DuPont has made a *prima facie* case that the information specified above is a trade secret. The information, therefore, may be withheld under section 3(a)(10) of the Open Records Act. The remaining requested information must be released.

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,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/lmm

Ref.: ID# 19241
ID# 19769
ID# 19828
ID# 19903

Enclosures: Marked documents

cc: Mr. William Moltz
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(w/o enclosures)