



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 22, 1994

Mr. Charles E. Griffith, III
Deputy City Attorney
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-8828

OR94-127

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24257.

The City of Austin (the "city") has received a request for certain surveys and code information relating to city salaries. Specifically, the requestor seeks "the most recently conducted salary/market surveys conducted which establishes the salary range, base rates and actual salary averages for Mechanics and Property Appraisers/Agents *including with this information the 'Code Key' for the various organizations surveyed.*" (Emphasis in original). You advise us that the city will make the requested surveys available to the requestor. You object, however, to release of the requested "code key" and claim that section 552.110 of the act excepts it from required public disclosure.

You have submitted a representative sample of the requested "code key" to us for review. The "code key" is merely a list of private employers that provided salary information to the city. You contend that the "code key" "is protected from required public disclosure by Section 552.110 since its release would disclose confidential commercial and financial information." You argue that "[n]o city ordinance requires private employers to cooperate with city officials in a job market survey" and that "[c]ompelled release of this information will significantly impair the city's ability to obtain this information in the future."

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. You refer us to Open Records Decision No.

256 (1980), in which this office concluded that section 552.110 excepted almost identical information from required public disclosure. In that decision this office relied on federal cases ruling on exemption 4 of the federal Freedom of Information Act ("FOIA") in applying section 552.110 to commercial information. See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). However, in *Open Records Decision No. 592* (1991), reliance on federal interpretations of exemption 4 of FOIA was reexamined. As a consequence of this reexamination, open records decisions exempting commercial and financial information pursuant to federal interpretations of exemption 4 were overruled. Unless the information requested constitutes trade secrets or is "privileged or confidential" under the common or statutory law of Texas, it cannot be withheld under section 552.110. Accordingly, unless the "code key" constitutes a "trade secret," section 552.110 does not except it from required public disclosure. You do not claim that the "code key" constitutes trade secrets.¹ Moreover, you have not demonstrated, nor is it otherwise apparent, that the "code key" is "privileged or confidential" under the common or statutory law of Texas. Accordingly, we conclude that you may not withhold the requested information under section 552.110 of the act and must release it 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,



Susan Garrison
Assistant Attorney General
Open Government Section

¹We note that, as a matter of law, salary information does not constitute trade secrets. Texas 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees. [Emphasis added.]

RESTATEMENT OF TORTS § 757 cmt. b (1939). Thus, section 552.110 does not except the "code key," even to the extent that its release will enable the requestor to identify salary information of individual employers.

SLG/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 24257
ID# 24281
ID# 24297

cc: Mr. Greg Powell
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(w/o enclosures)