



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-613

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26154.

The City of Houston (the "city") has received a request for address lists in certain zip code areas for dogs that the city Bureau of Animal Registration and Care registered. You have submitted a representative sample of the requested information to us for review. You claim that the city may withhold the requested information from required public disclosure under sections 552.101 and 552.110 of the Government Code.

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. 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 (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 A trade secret is 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.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added).¹

On behalf of the veterinarians implicated by this request, you have, pursuant to section 552.305(c) of the Government Code, stated your reasons why the requested information should be excepted as a trade secret. *See also* Open Records Decision No. 552 at 5-6 (stating that *if governmental body takes no position* with regard to whether requested information is trade secret excepted under statutory predecessor to section 552.110, then we accept third party's trade secret argument if that party establishes prima facie case for exception and no argument is submitted that rebuts claim as matter of law). Although your arguments are conclusory, you have supported your arguments with affidavits from two veterinarians who presumably have confidential information on the requested lists. These affidavits indicate that the information supplied to the city's Bureau of Animal Regulation and Care by veterinarians is not widely known outside veterinarians' offices and that it would be extremely difficult to duplicate this information unless the city released it. In addition, the veterinarians advise us that release of the requested information would give competitors a substantial competitive advantage. The veterinarians further maintain that vaccination information is of value to veterinary practices because it is used to remind veterinarians and pet owners of impending vaccination deadlines. Finally, the veterinarians indicate that great effort and expense are involved in creating this information.²

¹The six factors that the Restatement lists 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.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2, 306 at 2 (1982); 255 (1980) at 2. When an agency or company fails to provide relevant information regarding factors necessary to make a section 552.110 claim, a governmental body has no basis for withholding the information under section 552.110. *See* Open Records Decision No. 402 (1983) at 2.

²We note that you have cited section 18E(a) of the Veterinary Licensing Act, V.T.C.S. 8890, which requires that veterinarians keep confidential information regarding the care of an animal "except on written authorization or another form of waiver executed by the client or on receipt by the veterinarian of

We believe that, in light of the supporting detailed affidavits, you have established a prima facie case that the requested information is a trade secret. Moreover, your demonstration is un rebutted as a matter of law.³ Accordingly, we conclude that you must withhold the requested information under section 552.110 of the Government Code. As we resolve this matter under section 552.110, we need not address the applicability of section 552.101 at this time.

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 our office.

Yours very truly,



KyMBERLY K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/GCK/rho

Ref.: ID# 26154

Enclosures: Submitted documents

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(w/o enclosures)

(Footnote continued)

an appropriate court order or subpoena.” Section 18E(a) applies only to information in the custody of veterinarians; it does not apply to information regarding the care of an animal when the information is in the possession of a city. (We assume that section 18E authorizes a veterinarian to release the requested information to the city pursuant to city ordinance.) Section 18E(a) is helpful insofar as it supports the city’s argument that the requested information constitutes trade secret information of the various veterinarians who submitted the information to the city. See RESTATEMENT OF TORTS § 757 cmt. b (listing indicia of trade secret information); *supra* note 1 (quoting RESTATEMENT OF TORTS § 757 cmt. b).

³You rely in part on a prior open records ruling that this office issued, Open Records Letter No. 92-294 (1992), in which this office concluded as we conclude here. We note, however, that each trade secret claim must be proven on its own merits according to the circumstances of each particular case. Thus, neither Open Records Letter No. 92-294 nor this ruling makes information such as that requested here a trade secret *as a matter of law*.