



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 18, 1995

Ms. Diane Smith  
Staff Attorney  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR95-179

Dear Ms. Smith:

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# 29971.

The Texas Natural Resource Conservation Commission (the "commission") has received a request for information relating to a certain tire disposal company. Specifically, the requestor seeks "copies of the front pages of all of the monthly Operations Reports filed with the TNRCC by each Safe Tire Disposal plant from the time that Safe began operations in 1992 to date." In addition, the requestor seeks "the third page of the new operations reports filed by Safe Tire Disposal that the TNRCC began utilizing this summer." You have submitted the requested information to us for review and claim that sections 552.101 and 552.110 of the Government Code except the requested information from required public disclosure.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with the Solid Waste Disposal Act, chapter 361 of the Health and Safety Code. Section 361.493 of the Health and Safety Code provides that "[i]nformation submitted to the commission in accordance with Section 361.477(g) or Section 361.486(a) or (d), and any report generated by the commission based on the information, is confidential and is not subject to disclosure" under the Open Records Act. Section 361.477 relates to payments the commission may make to waste tire processors. Section 361.477(g) provides that "the commission may reimburse a processor for shredded scrap tires if the processor has a binding agreement to deliver the shredded scrap tires to a person to recycle or reuse or to use for energy recovery within 180 days after the date of reimbursement." Section 361.486(a) requires registered waste tire

processors to "identify those persons who will accept the processor's shredded scrap tire pieces for recycling or reuse or to use the shredded scrap tires for energy recovery." Section 361.486(d) requires registered processors to report on a semiannual basis "their recycling, reuse, and energy recovery activities to the commission."

You have submitted to us for review the "Monthly Operations Report" forms completed by Safe Tire Disposal, Inc., from 1992 through 1994. You advise us that these forms are completed and submitted to the commission by registered processors for purposes of seeking reimbursement for waste tire processing. You claim that the third page of the report "contains information relating to recycling, reuse, and energy recovery activities." You explain that, although it is possible to redact the actual end user customer names and registration numbers, the form "shows a running total of all tire disposal activities." Thus, "the information submitted regarding totals of pounds [of shredded tires] sent to end users, could be readily derived even if the figure itself were redacted."<sup>1</sup> We disagree that the commission must withhold the entire page to protect the confidential information. We have marked the "[i]nformation submitted to the commission in accordance with Section 361.477(g) or Section 361.486(a) or (d)" that is confidential under section 361.493 of the Health and Safety Code and other information from which such information could be derived. The commission must withhold the marked information on page 3 of the requested reports under section 552.101 of the Government Code.

You also claim that section 552.110 of the Government Code excepts page 1 of the reports. Pursuant to section 552.305(c) of the Government Code, we have notified the company whose interests may be affected by disclosure of the information submitted to us for review. In response, we have received a letter from the president of Safe Tire Disposal Corporation of Texas ("Safe Tire") contending that the submitted information is protected from disclosure by 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,

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<sup>1</sup>You explain that the commission is currently revising page 3 of the report to segregate the confidential information.

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). The Restatement lists six factors 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 this information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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.

We conclude that Safe Tire has not made a prima facie case establishing that the information on page 1 of the reports constitutes "trade secrets" and has not referred us to any state judicial decision or statute that makes the information either privileged or confidential as a matter of law.<sup>2</sup> Accordingly, the commission may not withhold the information on page 1 of the reports under section 552.110 of the Government Code.

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<sup>2</sup>Safe Tire claims that they "have been led to believe that information submitted to the TNRCC is to be held in confidence and certain information can only be released to the public with the consent of the processor." Information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied 430 U.S. 931 (1977). Unless the information falls within one of the act's exceptions to disclosure, it must be released, notwithstanding any agreement between the TNRCC and Safe Tire specifying otherwise.

The commission must, however, withhold the marked portions of page 3 of the submitted reports pursuant to section 361.493 of the Health and Safety Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
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Open Government Section

MAR/GCK/rho

Ref.: ID# 29971

Enclosures: Marked documents

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