



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 21, 1995

Ms. Sandra D. Hachem
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR95-430

Dear Ms. Hachem:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 21254.

Harris County (the "county") received two open records requests for records relating to a certain request for proposal. Both requestors seek the proposals submitted by certain companies. In addition, the first requestor seeks "the selection committee recommendation, its related report and evaluation criteria and/or notes." At first, you contended that this information is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code and section 262.030 of the Local Government Code. However, you withdrew your section 552.104 claim once the county formally awarded the contract. Because you raised only section 552.104 for the requested selection committee information, we assume that you have released this information to the requestor, and we will address only the availability of the requested proposals in this ruling.

Pursuant to section 552.305 of the Government Code, the four companies whose interests may be affected by the disclosure of the information were notified of the request for the information. Two of the four companies, Cubic Toll Systems and Amtech Systems Corporation, have sent letters claiming that certain information in their proposals is protected from disclosure.

Section 552.110 of the Government Code excepts from required public disclosure "trade secrets and commercial and financial information obtained from a person and privileged or confidential by statute or judicial decision." For information to be excepted from required public disclosure as "commercial or financial information," the information must be privileged or confidential under the common or statutory law of Texas. Open Records Decision No. 592 (1991) at 7. The companies do not raise, nor are we aware of, any statutory law that would make the requested information confidential. Accordingly, the county may not withhold the requested information under section 552.110 as "commercial or financial information . . . privileged or confidential by statute or judicial decision."

Section 552.110 also excepts from disclosure information that may constitute a trade secret. 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). The Restatement of Torts defines a trade secret as follows:

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. 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. 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 out side 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. The governmental body or the company whose records are at issue must make a prima facie case for exception as a trade secret under section 552.110. *See* Open Records Decision No. 552 (1990) at 5.

Cubic first argues that portions of its proposal consists of protected customer lists. A customer list is the type of information that may be a trade secret. *See id.* at 3. However, to have a customer list protected under section 552.110, a company must make a prima facie case that the customer list is a trade secret using the six factors listed by the Restatement. In this case, Cubic did not make a prima facie case that its customer lists are trade secrets. Therefore, you must release the customer lists.

Cubic also identifies other portions of its proposal as trade secrets. In this case, however, Cubic provided sufficient information to establish a prima facie case that most of this information constitutes trade secrets. Therefore, you may withhold most of the information, other than customer lists, Cubic claims is a trade secret. We have marked the documents accordingly.

The information identified by Amtech as proprietary consists of the costs Amtech proposed charging the county. Amtech did not establish a prima facie case that this information is a trade secret. Furthermore, this type of information is not ordinarily considered trade secret information. *See, e.g.,* Open Records Decision Nos. 319 (1982) at 3, 306 (1982) at 3. In fact, the Restatement specifically lists "a secret bid for a contract" as the type of business information that is not a trade secret. RESTATEMENT OF TORTS § 757 cmt. b (1939). Therefore, you may not withhold under section 552.110 the information identified by Amtech as proprietary.

Section 262.030 of the Local Government Code authorizes counties to use an alternative competitive bidding procedure for obtaining insurance and high technology items. Section 262.030(b) provides, in pertinent part, as follows:

All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, *except for trade secrets and confidential information contained in the proposals and identified as such.* [Emphasis added.]

This section makes specifically public all information in these types of proposals except for information that is a trade secret or is otherwise confidential by law. Thus, section 262.030 is essentially coextensive with section 552.110 of the Government Code and does not have to be addressed separately.

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/rho

Ref.: ID #21254

Enclosures: Marked documents

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