



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1995

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
Office of the City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR95-1021

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34920.

The City of Dallas (the "city") received an open records request for information submitted to the city relating to the city's request for bids for the private management of the city's convention center. You inform us that (1) the city submitted an invitation for bids, (2) received one bid, the subject of this request, (3) rejected the bid, (4) redrafted the invitation, and (5) as yet, the city has not accepted a bid with regard to the revised invitation. Though you raise no exceptions on behalf of the city, you assert that the party submitting the information requested may claim an exception to public disclosure pursuant to chapter 552 of the Government Code. This office informed the party submitting the information, Spectacor Management Group ("SMG"), of their obligation to claim any exceptions to disclosure that they believe apply to the requested information, together with their arguments as to why they believe the claimed exceptions apply. See Gov't Code § 552.305. SMG responded and submitted for our review the related documents. SMG contends that (1) section 552.104 of the Government Code excepts from required public disclosure its complete bid package and (2) section 552.110 of the Government Code excepts from required public disclosure the marketing plan, management approach, financial information, and financial statements that are all part of the requested bid package.

Section 552.104 of the Government Code excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the

interests of private parties that submit information to a governmental body. *Id.* at 8-9. A governmental body may waive section 552.104 since the exception was developed to protect a governmental body's interests. See Open Records Decision No. 592 (1991) at 8. The city does not claim that section 552.104 excepts the requested information from required disclosure. Since the only interest involved appears to be that of a private entity, SMG, section 552.104 does not apply to protect its interest. Therefore, the city may not withhold the SMG bid package pursuant to section 552.104.

Section 552.110 excepts from disclosure trade secrets or financial information obtained from a person and confidential by statute or judicial decision. Section 552.110 is divided into two parts: (1) trade secrets and (2) commercial or financial information. The Supreme Court of Texas adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

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 a single or ephemeral event 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); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). 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 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 one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.¹ To fall within the second part of section 552.110, the information must be made confidential by a statute or judicial decision. Open Records Decision No. 592 (1991) at 6.

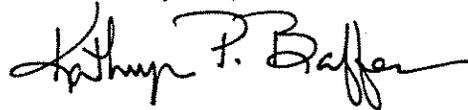
¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of 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, *supra*; see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

Whether a claimant makes a prima facie case depends upon whether the claimant's arguments as a whole correspond to the criteria for trade secrets detailed in the Restatement of Torts and adopted by the Texas courts. Open Records Decision No. 620 (1993), 552 (1990). Though SMG claims that portions of its bid package are trade secrets, it only states in a general manner the applicable factors and presents no substantive arguments as to how the information meets the definition of a trade secret or the requirements of the Restatement of Torts. We conclude that SMG has not made a prima facie case that its marketing plan and management approach are trade secrets. Therefore, the commission may not withhold this information from disclosure pursuant to "trade secret" branch of section 552.110.

SMG asserts that the financial statements and financial information submitted with its bid are excepted from disclosure pursuant to section 552.110 of the Government Code. As SMG has not demonstrated that a statute or judicial decision excepts this information from disclosure, nor are we aware of any that would except this information, we conclude that this information is not excepted from disclosure by the second part of section 552.110 of the Government Code. Consequently, the city may not withhold this information from the requestor pursuant to the "commercial or financial" branch of section 552.110.

Since we conclude that the information requested may not be withheld from disclosure pursuant to either exception raised by SMG, the city must disclose the information to the requestor. We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
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KPB/rho

Ref: ID# 34920

Enclosures: Submitted documents

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