



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 6, 1995

Mr. Miles K. Risley  
Assistant City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR95-1365

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33977.

The City of Victoria (the "city") received a request for copies of "architects construction documents (pages noted) and specifications -- project Victoria County Juvenile Justice/Detention Center." You claim that a portion of the requested information is excepted from disclosure under sections 552.108 and 552.110 of the Government Code. You have submitted to this office for review representative samples of the documents requested. We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.108 excepts from disclosure internal records of a law enforcement agency maintained for internal use in matters relating to law enforcement. To be excepted under section 552.108(b), the release of the information must unduly interfere with law enforcement. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (1977)). You state that the architect's drawings are internal records of the Victoria County Juvenile Probation Office and that the drawings show various items, such as passageways, vents, and security devices, "that would enable a person to more easily penetrate the security of this juvenile jail facility." We agree that the release of these plans would unduly interfere with law enforcement. See Open Records Decision No. 413 (1984) (sketch showing security measures to be used by Texas Department of Corrections for execution may be withheld because release may make crowd control difficult). Therefore, the city may withhold the requested architect's drawings.

You have also submitted a sample of the Victoria County Criminal Justice/Detention Center Project Manual. After reviewing the sample documents, we agree that portions of the project manual are excepted from disclosure by section 552.108(b) of the Government Code because release of this information would unduly interfere with law enforcement. The portions of the manual that, if disclosed, would allow an individual to "more easily penetrate the security of this juvenile jail facility" may be withheld under section 552.108(b), including specifications for electrical wiring, ductwork, security glazing, and electronic security controls. Other portions of the manual do not, however, on their face, indicate that their release would unduly interfere with law enforcement. The section of the manual entitled "Soil Stabilization" that was submitted as a representative sample does not indicate on its face that its release would compromise jail security or otherwise unduly interfere with law enforcement. Therefore, the city may not withhold this section.

We note that other sections of the project manual that were not submitted to us for review may also not be excepted under section 552.108. In particular, at least two of these sections, which we have marked, appear to deal with the expenditure of public funds. The public has a legitimate interest in this type of information. You have not established that pricing and payments under a public contract are protected by section 552.108(b). Therefore, the information in the manual that discloses the expenditure of public funds and those portions of the manual that would not compromise jail security if released may not be withheld from disclosure under section 552.108(b).

As we have concluded that at least three sections of the project manual may not be withheld under section 552.108, we must address your section 552.110 claim. Pursuant to section 552.305 of the Government Code, this office informed the architect, Harry Goleman Architects, Inc. (the "Architect") of the request and of its obligation to claim the exceptions to disclosure it believes apply to the requested information, together with its arguments as to why it believes the claimed exceptions apply. The Architect responded, claiming that section 552.110 and the Architectural Works Copyright Protection Act of 1990 except the requested information from disclosure.

Section 552.110 excepts from disclosure trade secrets or financial information obtained from a person and confidential by statute or judicial decision. The Texas Supreme Court has 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

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.<sup>1</sup>

As to the "Soil Stabilization" section of the project manual, we conclude that neither the city nor the Architect has made a prima facie case that this information is a trade secret. Therefore, the city may not withhold this section under section 552.110. The other two sections dealing with the expenditure of public funds were not submitted to this office for review. We are therefore unable to determine whether they are trade secrets. The Government Code requires a governmental body seeking an opinion from this office to submit the specific information requested.<sup>2</sup> Responsive documents or representative samples of responsive documents are required because "[i]n order to determine whether information is subject to a particular exception, this office ordinarily must review the information." Open Records Decision No. 497 (1988) at 4. We note that, as the city did not timely submit these documents to us for review, a presumption arises that the information is public. Open Records Decision No. 195 (1978). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release these two sections. *Id.*; *see also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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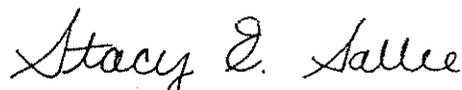
<sup>1</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and other involved in [the company's] business; (3) the 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 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

<sup>2</sup>Gov't Code § 552.303. We note that this requirement is now found in section 552.301(b)(3) of the Government Code, as amended in the last legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 18, 1995 Tex. Sess. Law Serv. 5127, 5139 (Vernon) (to be codified as Gov't Code § 552.301(b)(3)).

The Architect claims that the materials at issue are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Re: ID# 33977

Enclosures: Marked documents

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