



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 14, 1996

Mr. John M. Hill
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR96-0953

Dear Mr. Hill:

On behalf of the Town of Addison (the "town") 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# 39732.

The town received an open records request for proposals submitted by two specified companies for emergency medical services billing. You have requested an open records decision from this office pursuant to section 552.305 of the Government Code as to whether any portions of the requested proposals constitute confidential "trade secret or commercial or financial information" for purposes of section 552.110 of the Government Code. Consequently, in accordance with the practice this office established in Open Records Decision No. 575 (1990), we notified representatives of the two companies that we received your request for an open records decision regarding their proposals. In our notification, this office requested an explanation as to why any of the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation within a reasonable time, this office would instruct the town to disclose the information.

Both of the companies timely responded to our notice. However, Diversified HealthCare Services, Inc. provided this office with only general remarks reflecting their desire that their proposal not be released to the public. Because this company has not met its burden in demonstrating that any information in its proposal is confidential as a matter of law, this office has no basis on which to conclude that section 552.110 applies. Accordingly, the town must release this proposal in its entirety.

On the other hand, Texas Medical Data Systems has made specific arguments as to why particular portions of its proposal constitute "trade secret" information under section 552.110. 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, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . 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) (emphasis added). *See also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret.¹ This office must accept a claim that information is excepted as a trade secret if a prima facie case is made that the six factors apply and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5. In this instance Texas Medical Data Systems has made a prima facie case that certain portions of its proposal should be withheld from the public at this time pursuant to section 552.110. We have marked in the proposal's "Table of Contents" the sections of the proposal that the town must withhold. The remaining portions of the proposal must be released.

¹These six factors are

- 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;
- and 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 No. 232 (1979), *supra*.

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 regarding any other records.² If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/rho

Ref.: ID# 39732

Enclosures: Marked proposals

cc: Mr. Tom Van Wyngarden
Municipal Services Bureau
Balcones Drive, Suite 100
Austin, Texas 78731-4202
(w/o enclosures)

Mr. Kevin Sigler
Texas Medical Data Systems, Inc.
3301 South Alameda, Suite 101
Corpus Christi, Texas 78411
(w/o enclosures)

Mr. Jerry O'Conner
Diversified HealthCare Services, Inc.
800 E. Cambell Road, Suite 399
Richardson, Texas 75081
(w/o enclosures)

²This ruling particularly should not be construed as authorizing the withholding of any records that Texas Medical Data Systems creates for the town during the course of providing services for emergency medical services billing. See Gov't Code § 552.002(3) ("information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds" is public information).