



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 1, 1996

Mr. Jeffery C. Lewis  
Atchley, Russell, Waldrop & Hlavinka, L.L.P.  
P.O. Box 5517  
Texarkana, Texas 75505-5517

OR96-2066

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101808.

The Texarkana Independent School District (the "district"), which you represent, received a request for a copy of the "Tex Net Contract with all attachments." You have released to the requestor a copy of the contract with Schedule 3.2(b) redacted. You contend that Schedule 3.2(b) is excepted from disclosure pursuant to section 552.110 of the Government Code. Pursuant to section 552.305 of the Government Code, Texarkana Regional Healthcare Network ("TexNet") has also submitted written comments to this office explaining why Schedule 3.2(b) of the contract should be excepted from disclosure under section 552.110.

Section 552.110 protects the property interests of private persons by excepting from 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, 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). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>1</sup> This office has held that if a governmental body takes no position with regard to the application of the trade secret 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.

Schedule 3.2(b) of the contract, entitled "Compensation Schedule," lists the fees that the district pays for providing health benefits to its employees. Both the district and TexNet contend that the fee schedule is trade secret information. TexNet has addressed each of the six trade secret factors and thereby established a prima facie case for excepting the fee schedule from disclosure under section 552.110. We have marked the portions of Schedule 3.2(b) that constitute TexNet's fee schedule and are excepted from disclosure under section 552.110. The district must withhold this information from disclosure. As for the other information contained in Schedule 3.2(b), the district must release this information to the requestor.

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

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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 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 § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

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

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 101808

Enclosures: Submitted documents

cc: Ms. Dot Carmichael  
TSTA Vice-President  
812 College Drive  
Texarkana, Texas 75503  
(w/o enclosures)

Ms. Susan F. Monaco  
Vinson & Elkins, L.L.P.  
3700 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201-2975  
(w/o enclosures)