



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Mr. John A. Riley
Litigation Support Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-2116

Dear Mr. Riley:

You ask this office to reconsider our decision in Open Records Letter No. 96-1599 (1996) to the extent we concluded that the Texas Natural Resource Conservation Commission (the "commission") could not withhold an engineering drawing under section 552.110 of the Government Code. Your request for reconsideration was assigned ID# 102434.

The commission received two open records requests for the commission's records regarding Griffin Industries ("Griffin"). In its original request for a ruling to this office, the commission raised section 552.110 on behalf of Griffin; however, the commission did not otherwise explain how the requested information is a trade secret. In Open Records Letter No. 96-1599 (1996), this office concluded in part that Griffin had not made a prima facie case that the engineering drawing is a trade secret. We therefore concluded that the drawing was not excepted from disclosure under section 552.110 of the Government Code.

In this request for reconsideration, you re-urge your claim that the drawing is a trade secret and provide a detailed explanation to support your claim. Because section 552.110 implicates the proprietary interests of third parties, we are compelled to address your arguments that the requested engineering drawing is a trade secret.

Section 552.110 excepts from disclosure trade secrets and commercial 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

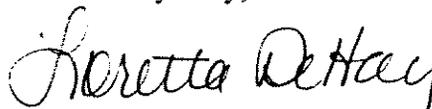
chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business 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).¹

This office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a prima facie case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; *see* Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure). We have reviewed the commission's arguments and conclude that you have now established a prima facie case that this information is a trade secret and, therefore, the commission must withhold this information under section 552.110.

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. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

¹The following criteria determines if information constitutes a trade secret:

(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.

LRD/rho

Ref.: ID# 102434

Enclosures: Submitted document

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