



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1997

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
State of Texas
Austin, Texas 78774

OR97-1104

Dear Ms. Joseph :

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# 106196.

The Comptroller of Public Accounts (the "comptroller") received a request for "the TexPool RFP responses." You claim that some of the requested information is excepted from disclosure under section 552.110 of the Government Code. You state that Texas Commerce Bank ("TCB") indicated that part of its proposal document is confidential.¹ Additionally, you advise us that SunGard Investment Systems, Inc. ("SunGard") claims that the proposal information submitted to the comptroller by BancOne is actually the proprietary information of SunGard. We have considered the arguments and reviewed the submitted information.²

Because the property and privacy rights of third parties may be implicated by the release of some of the requested information, this office notified TCB and SunGard of their opportunity to claim that the information at issue is excepted from disclosure. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No.

¹We note that information is not excepted from disclosure merely because it is furnished with the expectation that it will be kept confidential. See, e.g., Open Records Decision No. 180 (1977).

²Because you have only requested our decision as to the disclosure of information concerning TCB and SunGard, we assume that the comptroller has released information concerning other companies which may be responsive to this request. We therefore limit this decision to the information submitted to this office relating to TCB and SunGard.

542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). TCB did not respond to our notice; therefore, we have no basis to conclude that TCB's information is excepted from disclosure. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. Therefore, the submitted information concerning Texas Commerce Bank must be released to the requestor.

SunGard responded by arguing that the "Invest One" information submitted to the comptroller is excepted from disclosure under sections 552.101, 552.110, and 552.112.³ 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 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

³We address SunGard's claimed section 552.110 exception together with the comptroller's claimed exception under that same statute. Moreover, because section 552.110 is redundant with section 552.101 to the extent that statutes confer confidentiality on proprietary information, such confidentiality will be incorporated into the Open Records Act by either section, and we therefore need not consider SunGard's argument under section 552.101.

argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.⁴

After reviewing SunGard's arguments, we conclude that the company has made a prima facie case that the "Invest One" information submitted to this office for our review is a trade secret. Therefore, the comptroller must withhold this information from disclosure.⁵

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 106196

Enclosures: Submitted documents

cc: Mr. Fred McMullen
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(w/o enclosures)

⁴The 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 Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

⁵Because we base our ruling on other grounds, we do not address SunGard's arguments under section 552.112 of the Government Code.

