Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 12, 1997

Dr. Richard Rafes
Vice President for Legal Affairs
and General Counsel
University of North Texas
P.O. Box 13426
Denton, Texas 76203-6426

OR97-2043

Dear Dr. Rafes:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108434.

The University of North Texas (the "university") received a request for the research findings from studies conducted for the university by the Addison Marketing Group ("AMG"). You assert that the information requested is excepted from disclosure pursuant to sections 552.110 and 552.111 of the Government Code. Representative samples of the documents at issue were submitted to this office for review.[1]

You assert that the information at issue is a trade secret protected from disclosure under section 552.110 of the Government Code. Section 552.110 provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Section 552.110 refers to two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. AMG does not assert that the information comes within the commercial or financial aspect of section 552.110. AMG does assert that the records are excepted from disclosure under the trade secret aspect of section 552.110.

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

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). The Texas Supreme Court has adopted the definition of the term "trade secret" from the Restatement of Torts, section 757 (1939), 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 or 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).

AMG has made a prima facie case that the information that specifically explains the methodology and process used is a trade secret that must be withheld from disclosure pursuant to section 552.110.[2] We have marked the portions of the submitted documents that are protected as trade secret information under section 552.110.

You have also asserted that section 552.111 excepts the remaining information from disclosure. Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." However, section 552.111 does not except from disclosure purely factual information. The documents at issue generally concern policymaking issues. Much of the information at issue is factual, but we have marked the portions of the submitted documents that may be withheld from disclosure pursuant to section 552.111. Open Records Decision No 631 (1995).

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

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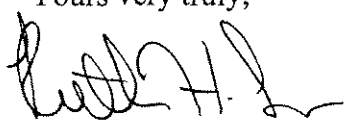
[2]AMG asserted that all of the information at issue should be protected from disclosure, but made its prima facie case only as to the portions that explain the methodology and processes used to create the information at issue. We also note that the other information at issue did not fit the trade secret definition of a process or device for continuous use in one's business.

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

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 108434

Enclosures: Submitted documents

cc: Ms. Alicia Miller
P.O. Box 5156
Denton, Texas 76203
(w/o enclosures)