



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1997

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-2199

Dear Ms. Nguyen:

You ask this office to reconsider our decision in Open Records Letter No. 97-1346 (1997). Your request for reconsideration was assigned ID# 109290.

The City of Houston (the "city") received a request for information relating to Arena Operating Corporation ("AOC"). In Open Records Letter No. 97-1346 (1997), we reviewed documents submitted as Exhibits 4-1, 4-2, and 4-3, and concluded that the city must withhold Exhibit 4-2, a licensing agreement, under section 552.110. We further concluded that the remaining information could not be withheld under section 552.110. You ask that we reconsider our conclusion that Exhibit 4-1, an impact chart, and Exhibit 4-3, a group of company transaction documents, are not protected under section 552.110. Representatives of AOC have also provided additional arguments for withholding the remaining information under section 552.110.

Section 552.110 protects the property interests of private parties 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 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 argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.¹ After examining AOC’s additional arguments, we believe that AOC has established that the remaining information may be withheld as trade secret. *See* Open Records Decision No. 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. We overrule Open Records Letter No. 97-1346 (1997) to the extent it conflicts with this conclusion. The city must therefore withhold Exhibit 4-1 and Exhibit 4-3 under section 552.110.²

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 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 also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

²AOC and the city also argue that this office should consider the test articulated in *Critical Mass* for the commercial or financial information prong of section 552.110. *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992) (en banc), *cert. denied*, 507 U.S. 984, 113 S.Ct. 1579 (1992). Because we have concluded that the city must withhold the requested information under the first prong of section 552.110, we need not address those arguments.

LRD/rho

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Enclosures: Submitted documents

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