



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1997

Mr. John Steiner
Division Chief
The City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR97-2485

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109984.

The City of Austin (the "city") received a request for a "list of the pet owners name and address and the type of animal in their possession." You claim that the requested information is excepted from required public disclosure by section 552.110 of the Government Code. You have submitted representative samples of the requested information to this office for review.¹

You assert that individual veterinarians have proprietary interests that are implicated by this request. We also received a letter from the president of the Travis County Veterinary Medical Association, otherwise known as the Capitol Area Veterinary Medical Association concerning the request for information.

Section 552.110 protects the property interests of private persons by excepting from required public 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

¹We 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 Nos. 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.

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) (emphasis added).²

This office cannot conclude that information is a trade secret unless the governmental body or the third party in interest has provided evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983).

The documents submitted to us indicate that information supplied to the city by veterinarians is not widely known outside veterinarians' offices and that it would be extremely difficult to duplicate this information unless the city released it. Additionally, the information possessed by the veterinarians and transmitted to the city is information that cannot be accessed by anyone other than those veterinarian employees. Furthermore, the information cannot be properly acquired by another unless that person possesses a release from the animal's owner. It is also observed that release of the requested information would give competitors a substantial competitive advantage. The facts of this case are similar to those in Open Records Letter Nos. 92-294 (1992) and 96-392 (1996) where this office concluded that similar information in the possession of other cities must be withheld under section 552.110. Consequently, you must withhold the requested information under section 552.110 of the Government Code.

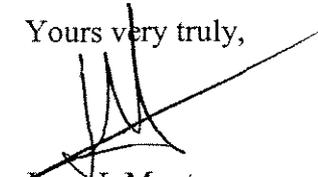
²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

- (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.

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,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', is written over a diagonal line that extends from the bottom left towards the top right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 109984

Enclosures: Submitted documents

cc: Mr. Steve Roberts
2106 Castlevew Drive
Austin, Texas 78728
(w/o enclosures)