



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 2, 1998

Mr. Norbert J. Hart  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR98-0002

Dear Mr. Hart:

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# 111278.

The City of Corpus Christi (the "city") received a request for

- Copies of the Material Safety Data Sheet (MSDS) for the sealer/rejuvenator used on the most recent project at Corpus Christi. . . . called Reflux/RejuvaSeal.
- Copies of the bills of lading for the shipments of the sealer/rejuvenator

You assert that a third party's privacy or property interest may be implicated by this request, and, therefore, you raise section 552.305 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents you submitted.

Pursuant to section 552.305 of the Government Code, this office notified Encon Technologies, Inc. of the request. *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. 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). Representatives for Encon Technologies, Inc. responded and assert that the requested information is excepted from required public disclosure based on Government Code 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) (emphasis added); *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.<sup>1</sup>

Encon Technologies, Inc. argues that certain portions of its proposal constitute a trade secret in that these portions reveal a methodology that is continually used in its business operations. However, the requestor only asks for the material safety data sheets (MSDS) for Reflux/RejuvaSeal and the bills of lading for the shipments of the sealer/rejuvenator. Encon

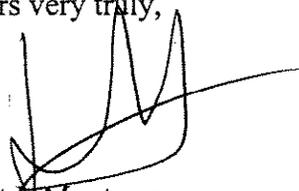
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<sup>1</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and 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.

Technologies, Inc. has not established that portions of its proposal responsive to this request are protected under section 552.110. Therefore the city must release the MSDS and the bills of lading to the requestor.

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,



Janet N. Monteros  
Assistant Attorney General  
Open Records Division

JIM/alg

Ref.: ID# 111278

Enclosures: Submitted documents

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