



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 12, 1998

Mr. Robert L. Dillard, III
Nichols, Jackson, Dillard, Hager & Smith
500 North Akard, Suite 1800
Dallas, Texas 75201

OR98-1210

Dear Mr. Dillard:

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# 114908.

The City of University Park (the "city") received a request for "a building permit and any application and copy of all plans" for four addresses in the city. You state that the city will release a copy of the building permit and application. You claim that the remaining information is *excepted from disclosure under sections 552.101 and 552.110 of the Government Code*. We have considered the exceptions you claim and have reviewed the representative sample documents you have submitted.¹

Initially, you state that the plans for two of the four properties have been destroyed by the city "in accordance with its standard procedure." Chapter 552 of the Government Code applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 430 (1985).

Because the property and privacy rights of a third party may be implicated by the release of some of the requested information, this office notified Fusch, Serold & Partners, Inc. ("Fusch") of this request and of its 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 Nos. 575 (1990), 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). Fusch

¹In reaching our conclusion here, 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 Nos. 499 (1988), 497 (1988)*. This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responded to our notice, claiming protection from disclosure for the requested plans under section 552.110.

Section 552.110 protects the property and privacy interests of third parties 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. Neither the city nor Fusch assert that the requested plans consist of confidential commercial or financial information. Accordingly, we need address only the trade secret branch of section 552.110.

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

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). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. *Id.*² You argue that the requested

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

architectural plans, as trade secrets, are confidential under the court's ruling in *Taco Cabana Intern, Inc. v. Two Pesos, Inc.*, 932 F.2d 1113 (5th Cir. 1991) *cert. granted in part*, 502 U.S. 1071 (1992), 112 S.Ct. 964, 117 L.Ed.2d 130, *affirmed* 505 U.S. 763 (1992), 112 S.Ct. 2753, 120 L.Ed.2d 615, *rehearing denied* 505 U.S. 1244 (1992), 113 S.Ct. 20, 1210 L.Ed.2d 947. In *Taco Cabana*, the court found that architectural plans may be trade secrets, and that the filing of such plans with a city does not make them public information within the context of secrecy that relates to the law of trade secrets. *Taco Cabana*, 932 F.2d at 1123, 1124. After reviewing the submitted material, we conclude that the plans are protected from required public disclosure as a trade secret under section 552.110. Accordingly, the city must not release the plans to the requestor.

As we resolve this matter under section 552.110, we need not address your arguments under section 552.101. 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/gle

Ref.: ID# 114908

Enclosures: Submitted documents

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