



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1998

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR98-2417

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118659.

The Dallas/Fort Worth International Airport Board (the "board") received a request for the lease between Trammell Crow Company/AMB Air Cargo L.P. ("Trammell Crow") and Challenge Air Cargo, Inc. ("Challenge Air") for space at the airport's Air Cargo Center. You claim that the requested information is excepted from public disclosure by section 552.110 of the Government Code. You have submitted a redacted copy of the lease to this office for review.

The board entered into a lease with Trammell Crow for the development of an international air cargo facility. Trammell Crow then entered into a sublease with Challenge Air. Only a redacted copy of the sublease, which is all the board possesses, is at issue here. Both the board and Trammell Crow inform us that the board is not entitled to review or receive a copy of the sublease. However, upon request by the board for the sublease, Trammell Crow provided the board with a redacted copy with the stipulation that it would be kept confidential.

Since the property and privacy rights of third parties are implicated by the release of the requested information here, this office notified Trammell Crow and Challenge Air 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).

Trammell Crow asserts section 552.110 as an exception to disclosure of its sublease with Challenge Air. 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 at 5 (1990).¹

In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C.

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.*

Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 at 4 (1996). To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.*

Trammell Crow asserts that its lease contains confidential terms which are aggressively negotiated between landlord and tenant and closely guarded by both parties. Furthermore, Trammell Crow argues that

the lease terms and negotiation strategies used by Trammell Crow are a hallmark of the company's ability to establish strong business relationships with its clients and have been a key factor to Trammell Crow's fifty years of success. . . . The Lease Agreement for the Air Cargo Centre is the first of its kind and will be constantly used by Trammell Crow in its current and future projects at DFW Airport and other airports. Trammell Crow will use this Lease Agreement in negotiating future leases. In addition to assisting Trammell Crow, the Lease Agreement will provide a more streamlined process for Trammell Crow's future clients in negotiating lease terms, and it will allow Trammell Crow and its clients to minimize legal fees and associated expenses.

Trammell Crow concludes that release of the redacted sublease will prevent it from competing effectively with others on existing air cargo facilities managed by Trammell Crow, as well as on future development projects. Additionally, Trammell Crow explains that it was not obligated to furnish the sublease to the board and would not have done so without assurances that it would be held in confidence.

After reviewing Trammell Crow's arguments and the submitted information, we conclude that Trammell Crow has satisfactorily established that disclosure of its sublease is likely to cause substantial harm to its competitive position. Thus, the board must withhold the redacted sublease under the commercial or financial information prong of section 552.110. *See* Open Records Decision No. 292 (1981) (contract submitted to governmental body involving two third parties was protected commercial or financial information).

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,



Yen-Ha Le
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Open Records Division

YHL/ch

Ref: ID# 118659

Enclosures: Submitted documents

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