



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 4, 1998

Mr. Rusty Renfroe, CLA  
City Attorney's Office  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR98-2954

Dear Mr. Renfroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119243.

The City of Longview (the "city") received two requests for records concerning proposals for the city's trunk radio system. Three companies, Motorola, Ericsson, and Transcript, submitted proposals for the system. The city selected Motorola's proposal and completed an agreement with Motorola to provide the system. A representative of Ericsson submitted an open records request for records, including copies of the proposals submitted by Motorola and Transcript. A representative of Transcript submitted an open records request for records, including the proposals submitted by Motorola and Ericsson. You state that you will provide Transcript and Ericsson with copies of the "base contract itself" but express concern that the exhibits to the contract and the proposals requested may be proprietary information which is protected from disclosure under section 552.110.

As provided by section 552.305 of the Open Records Act, this office notified Motorola, Transcript, and Ericsson of the requests and provided an opportunity to submit reasons as to why the information at issue should be withheld. However, neither Transcript nor Ericsson argued that section 552.110 protects the information contained in their proposals. *See* Open Records Decision No. 363 (1983) (third party has duty to establish how and why exception protects particular information). Thus, this office has no basis on which to conclude that section 552.110 is applicable to information provided to the city by Transcript and Ericsson. The Transcript and Ericsson information must be provided to the parties who requested the records.

Motorola submitted to this office a brief arguing the applicability of the trade secret prong of section 552.110 to the contract exhibits and its proposal. We will consider those arguments. Motorola asked that certain portions of the proposal and exhibits to the contract be withheld from disclosure because they disclose the "detailed system design developed for the Longview communications system." Motorola identifies these portions of its proposal and exhibits to the contract as: (1) system design/system diagram, (2) statement of work, (3) acceptance test plan, and (4) equipment list. Section 552.110 protects the property interests of third 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 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 at 2 (1990). 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. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>1</sup>

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<sup>1</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

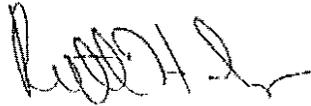
- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information 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), 306 (1982),

We have reviewed Motorola's arguments and the documents which it asserts are excepted from disclosure. We note that some of the information for which you assert section 552.110 does not appear to describe processes or devices for continuous use in business operations, but rather is limited to this particular project. We agree that you have demonstrated the applicability of section 552.110 to the system description (section 4); the test plan (section 6); and the system drawings and coverage maps (section 7). This information must be withheld in its entirety. The remaining documents that are responsive to the requests must be disclosed.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 119243

Enclosures: Submitted documents

cc: Mr. Joe Hayden  
Ericsson, Inc.  
4757 Irving Boulevard, Suite 106  
Dallas, Texas 75247  
(w/o enclosures)