



February 16, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR99-0451

Dear Ms. Aldredge:

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# 122074.

The Travis County Purchasing Office (the "county") received an open records request for the contract for Travis County's Drug and Alcohol Program. Please include the Matrix Evaluation Form.

You sought an open records decision from this office in connection with this request pursuant to section 552.305 of the Government Code and submitted as responsive to part of the request the proposal of the company holding the current contract with the county for review.¹ Consequently, this office notified representatives of Compliance Consortium Corporation ("CCC") that we received your request for an open records decision regarding their proposal. In our letter to CCC, this office requested an explanation as to why the information at issue was excepted from public disclosure.

A representative of CCC timely responded to our notification and contends that all pricing schedules, summaries, and cost proposals are excepted from required public disclosure because

CCC has devoted an incredible amount of time, and resource, to develop specific pricing structures and marketing strategies that enabled CCC to be more competitive than the other organization who

¹You state that the county has released other responsive information to the requestor.

bid on [the contract]. . . This information is considered extremely confidential, and revealing this data would potentially result in other organizations, [sic] duplicating our service with lower pricing.

Section 552.110 of the Government Code excepts from required public disclosure “[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” There are six factors to be assessed in determining whether information qualifies as a trade secret.² This office must accept a claim that information is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5 (1990).

However, where no evidence of the factors necessary to establish a trade secret claim is made we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983). In this instance CCC has not demonstrated how the six factors apply to the information at issue. Consequently, we have no basis for applying the trade secret branch of section 552.110 to this information. *See* Open Records Decision No. 552 (1990).

As noted above, however, section 552.110 also protects “commercial or financial information obtained from a person.” This material is clearly commercial information. To fall within section 552.110, however, it must be “privileged or confidential by statute or judicial decision.” Section 552.110 is patterned after section 552(b)(4) of the federal Freedom of Information Act, 5 U.S.C. section 552 *et. seq.* Open Records Decision Nos. 639 (1996), 309 (1982), 107 (1975). The test for determining whether commercial or financial information is confidential within the meaning of section 552(b)(4) is as follows:

a commercial or financial matter is ‘confidential’ for purposes of the exemption if disclosure of the information is likely to have *either* of the following effects: 1) to impair the Government's ability to obtain necessary information in the future; *or* 2) to cause substantial harm to the competitive

²These six factors are

- 1) the extent to which the information is known outside of [the company's] business; 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 to [its] competitors; 5) the amount of effort or money expended by [the company] in developing this information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts § 757 comment b (1939); *see also* Open Records Decision No. 232 (1979).

position of the person from whom the information was obtained. (Emphasis added.)

National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

The governmental body that maintains requested information is in the best position to determine whether disclosure will impair its ability to obtain similar information in the future. You have expressed no opinion on this subject. If the second test is satisfied, the information may be withheld. The courts have held that

in order to show the likelihood of substantial competitive harm, it is not necessary to show actual competitive harm. *Actual competition and the likelihood of substantial competitive injury* is [sic] all that need be shown. (Emphasis added.)

Gulf & Western Industries v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979); *see also National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1976). In this instance, CCC has made only conclusory and generalized allegations of competitive harm. Consequently, we cannot conclude that CCC has satisfied the requirements for non-disclosure under the "commercial or financial information" branch of section 552.110. *See National Parks*, 547 F.2d at 680.

Because CCC has failed to demonstrate the applicability of section 552.110, we conclude that the county must release the requested 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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref.: ID# 122074

Enclosures: Submitted documents

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