



November 9, 2000

Mr. Roland Castaneda
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2000-4354

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act. Your request was assigned ID# 141098.

Dallas Area Rapid Transit ("DART") received a request for twenty-one categories of information "associated with the build-out of the North Dallas and Garland Extensions of DART." You claim that the requested information is excepted from disclosure under section 552.110 of the Government Code. You also assert that the interests of a third party, the Parsons Transportation Group, Inc. ("Parsons") are implicated by the release of the responsive information. You state that you notified Parsons of the request for information.

Section 552.305(d) of the Act requires a governmental body to make a good faith effort to notify a party whose proprietary interest may be implicated by the release of the requested information. The third party notice must be sent within ten days of the governmental body's receipt of the request and must include a copy of the written request for information and a statement in the form prescribed by the attorney general.¹ The third party may submit to the attorney general, within ten days of receiving the notice, its reasons why the information in question should be withheld. Representatives of Parsons have submitted comment, arguing that portions of the responsive information should be withheld under section 552.110 of the Government Code.

The Public Information Act requires a governmental body that wishes to withhold requested information to request a decision from the attorney general as to whether the information is within an exception to disclosure within ten business days of the governmental body's receipt

¹The form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General's web site at www.oag.state.tx.us.

of the request for information. Gov't Code § 552.301(d). DART received the subject request for information on August 4, 2000, and received clarification of this request on August 17, 2000. DART submitted its request for decision to this office, regarding the requested information, by letter dated September 6, 2000, and received by this office on September 7, 2000. Thus, the DART did not comply with the ten day requirement of section 552.301. The requested information is therefore presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). As DART asserts that the interests of a third party are implicated by the release of the subject information. We will address the exceptions to disclosure which protect the interests of that third party.

Parsons has submitted information that it contends is representative of responsive information excepted by section 552.110 of the Government Code. This section protects the property interests of those supplying information to governmental entities. It reads as follows:

- (a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.
- (b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

This section protects two types of information: (1) trade secrets, and (2) commercial or financial information. 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).

In determining whether information is excepted from public disclosure as a trade secret this office applies the following factors from the Restatement of Torts:

- (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; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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

Blueprints, drawings, and customer lists are examples of information that may constitute trade secrets. *See, e.g., American Precision Vibrator Co. v. National Air Vibrator Co.*, 764 S.W.2d 274, 278 (Tex. App.--Houston [1st Dist.] 1988, no writ). Material which is essentially technical in nature and which relates to the substance of a proposal is ordinarily excepted as a trade secret. Open Records Decision Nos. 319 (1982), 296 (1981), 175 (1977). The terms of a contract with a state agency generally do not constitute a trade secret. Open Records Decision Nos. 541 (1990), 514 (1988). Similarly, information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing are not ordinarily excepted as trade secrets. Open Records Decision No. 319 (1982).

Since this office cannot make determinations of fact, we will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if sufficient facts to establish a *prima facie* case that the information is a trade secret are alleged and no argument is submitted that rebuts that claim *as a matter of law*. Open Records Decision No. 552 at 5 (1990).

The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See Open Records Decision No. 661 (1999); see also National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

From our review of the submitted materials and the arguments presented by representatives of Parsons we conclude that the arguments presented consist primarily of conclusory or generalized allegations, and are insufficient to establish the application of either prong of section 552.110 to the submitted materials. Therefore, the responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 141098

Encl: Submitted documents

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