



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 18, 1992

Mr. Michael J. Shearn
General Counsel
Texas National Research Laboratory Commission
1801 North Hampton Road, Suite 400
DeSoto, Texas 75115

OR92-63

Dear Mr. Shearn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14028.

You have received a request for information relating to a contract between the Texas National Research Laboratory Commission (the "commission") and Universal Field Services, Inc. ("UFS") for land acquisitions for the Superconducting Super Collider Research Laboratory project (the "project"). Specifically, the requestor seeks:

- 1) Date of Contract
- 2) Parties to Contract
- 3) Services to be provided
- 4) Time schedule for completion
- 5) Dollar amount of contract awarded.

The requestor also seeks access to the contract itself. You claim that Appendix D of the contract, which consists of a "Standard Fee Schedule," is excepted from required public disclosure by section 3(a)(4) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified the third party whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received a letter from UFS, which claims that Appendix D is excepted from required public disclosure by section 3(a)(4) of the Open Records Act. UFS objects to the release of the fee schedule information contained in Appendix D, which details the rates applicable to each classification of employee. Specifically, Appendix D lists "the hourly rate per classification, the payroll burden and overhead, the profit and billable rate per hour for each classification of employee or agent, [and information] for determining the maximum amount of the bid submitted by UFS to the Commission." For purposes of this ruling, we will assume that UFS seeks to establish that the information in Appendix D constitutes a trade secret that is excepted from required public disclosure by section 3(a)(10) of the Open Records Act. We are informed that the contract, except for Appendix D, has been released.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Once the competitive bidding process has ceased and a contract has been awarded, section 3(a)(4) will not except from disclosure information submitted with a bid or the contract itself. Open Records Decision No. 541 (1990) at 5. As you have informed us that the competitive bidding process engendering these materials has concluded, and the relevant contract has been awarded, neither you nor UFS may properly invoke a section 3(a)(4) exception. *See id.*

Section 3(a)(10) excepts 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. Based on the arguments made by UFS, we have inferred that UFS relies on the trade secret branch of that exception. 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.

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- (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). These factors are indicia of whether information constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. *See* Open Records Decision No. 552 at 3.

UFS asserts that the schedule of rates is "unique to UFS," and, if disclosed, would allow third parties "to ascertain the methodology and cost features utilized by UFS in submitting its bids," thereby placing UFS at a disadvantage in bidding on other projects. After considering these arguments in light of the Restatement's definition of a trade secret, we conclude that UFS has made a *prima facie* case for establishing a trade secret. *See* Open Records Decision No. 552. Accordingly, you may withhold Appendix D pursuant to section 3(a)(10) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-63.

Yours very truly,



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Opinion Committee

KG/GK/lcd

Ref.: D# 14028
D# 14178
D# 14309

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