



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 19, 2019

Mr. Ryan D. Pittman  
Counsel for City of Frisco  
Abernathy Roeder Boyd Hullett  
P.O. Box 1210  
McKinney, Texas 75069-1210

OR2019-07611

Dear Mr. Pittman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 755552 (Ref. No. G031120-122918).

The City of Frisco (the "city"), which you represent, received a request for home plans pertaining to a specified address. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Toll Brothers, Inc. ("Toll Brothers"). Accordingly, you state, and provide documentation showing, you notified Toll Brothers of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Toll Brothers. We have reviewed the submitted information and considered the submitted arguments.

Toll Brothers claims the submitted information is confidential under section 552.110 of the Government Code, which protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). 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. 1957); *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); *see also Huffines*, 314 S.W.2d at 776. 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.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Toll Brothers contends the submitted blueprints constitute a trade secret under section 552.110(a). Toll Brothers explains the submitted blueprints were used by Toll Brothers in building the house at issue. Toll Brothers indicates it either owns the respective blueprints or owns the rights to them. Upon review of Toll Brothers' arguments and the submitted information, we find Toll Brothers has demonstrated the submitted blueprints constitute a

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<sup>1</sup>The Restatement of Torts lists the following six factors as indicia of 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 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 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

trade secret. *See Taco Cabana Int'l v. Two Pesos, Inc.*, 932 F.2d 1113, 1123-25 (5th Cir. 1991), *aff'd*, 505 U.S. 763 (1992); *see also Ecolaire Inc. v. Crissman*, 542 F. Supp. 196, 206 (E.D. Pa.1982) (drawings, blueprints and lists constitute trade secrets because such information could be obtained, through other than improper means, only with difficulty and delay); *American Precision Vibrator Co. v. Nat'l Air Vibrator Co.*, 764 S.W.2d 274, 278 (Tex. App.—Houston [1st Dist.] 1988, no writ) (blueprints, drawings, and customer lists constitute trade secrets). Accordingly, the city must withhold the submitted information under section 552.110(a) of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/mo

Ref: ID# 755552

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.