



May 4, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-1734

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134780.

The Comptroller of Public Accounts (the “comptroller”) received a number of requests in which the responsive information consists of one or more proposals submitted to the comptroller by eight third parties, specifically LTD Financial Services, L.P., Southwest Credit Systems, Inc., Collections Express Services, Inc., Risk Management Alternatives, Inc., OSI Collection Services, Inc., Account Services Collections, Inc., Honor Creditors Agency, Inc., and SARMA. You have provided for our review the information that is responsive to the requests. You state that the requested information *may* be excepted from disclosure under section 552.110 of the Government Code.¹ However, you make no specific arguments in support of the section 552.110 assertion. You have notified the third parties of the requests by a letter dated March 2, 2000 in compliance with section 552.305 of the

¹We note that this office has issued a previous decision as to the precise information at issue. See Open Records Letter No. 2000-0851 (2000). The previous decision concluded that the entirety of the responsive information was excepted from disclosure under section 552.104 of the Government Code. Open Records Letter No. 2000-0851 applies to any of the requests for the information that the comptroller received prior to the award of the contract. Although you do not state when the contract was awarded, you have verbally advised this office that the comptroller received one or more requests for the information after the award of the contract. This decision applies to those requests that the comptroller received after the award of the contract. However, the comptroller has the discretion to waive its previously granted 552.104 exception as to those requests the comptroller received prior to the award of the contract and release to those requestors the information that is subject to release under the present ruling. See Gov’t Code § 552.007; Open Records Decision No. 541 at 5 (1990).

Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

Southwest Credit Systems, Inc. ("Southwest") responded to the notice, and asserted that its customer information contained on pages 1, 4, and 5 of their proposal constitutes trade secret information that is excepted from disclosure by section 552.110. *See* Gov't Code § 552.110(a). A "trade secret"

may consist of 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 Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978). There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (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 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). Upon careful review of the arguments and information submitted by Southwest, we believe that Southwest has made a prima facie showing that the customer information on pages 1, 4, and 5 of their proposal constitutes trade secret information. Open Records Decision No. 552 (1990) (section 552.110(a) applies where a prima facie showing is made to this office that the information constitutes a trade secret). We have marked the information that the comptroller must not release.

Southwest made no arguments for the withholding of the remaining information in their proposal. The other seven third parties did not respond to the notice. We therefore have no basis to conclude that any of the remaining responsive information is excepted from required public disclosure. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). The remaining information must, therefore, be released.

In summary, with the exception of the information we have marked in the Southwest proposal and which must not be released, the comptroller must release all of the responsive information.

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).

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 Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 134780

Encl. Submitted documents

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