



January 5, 2001

Ms. Sara Hoglund
Collin County
200 South McDonald, Suite 230
McKinney, Texas 75069

OR2001-0051

Dear Ms. Hoglund:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142887.

The Collin County Purchasing Department (the "county") received a request for the winning proposal for web site development, RFP No. 06099-00, the winning bid, and the ratings and ratings matrix which the county used to evaluate all of the proposals. The county takes no position as to whether any of the requested information is excepted from required public disclosure. The county believes, however, that the request for the winning proposal may implicate the proprietary interests of Idea Integration ("Idea"), which submitted the proposal.

Pursuant to section 552.305 of the Government Code, the county notified Idea of the request for information and of Idea's right to submit arguments to this office as to why the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d); 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 to disclosure under Public Information Act in certain circumstances).¹ The county also submitted the information in question to this office. Idea

¹Section 552.305 provides in relevant part that in giving notice to a private party whose proprietary interests may be implicated by a request for information, the governmental body must include

(B) a statement, *in the form prescribed by the attorney general*, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

- (i) each reason the person has as to why the information should be withheld; and
- (ii) a letter, memorandum, or brief in support of that reason.

Gov't Code § 552.305(d)(2)(B) (emphasis added). In the future, the county should use the attorney general's prescribed form, which is available at Appendix C of this office's Public Information Handbook and on the Attorney General's Web site at www.oag.state.tx.us.

has submitted comments in which it argues that portions of its proposal are excepted from disclosure under section 552.110 of the Government Code. The requestor, Technical Facilities Consulting, Inc. ("Technical"), also has submitted comments, in which Technical contends that Idea's entire proposal should be released. We have considered the comments submitted by Idea and Technical and have reviewed the requested information.

Initially, we note that the county does not claim that the rest of the requested information, including the amount of the winning bid, the ratings of the submitted proposals, and the ratings matrix, are excepted from public disclosure. If the county has not released that information, it must do so immediately. *See* Gov't Code §§ 552.006, .301(a), .302.

Next, we must consider whether the county timely asked for this attorney general decision. If a governmental body believes that information requested in writing may be excepted from disclosure under section 552.110, the governmental body must ask for an attorney general decision within ten business days of the date of its receipt of the request for information. *See* Gov't Code §§ 552.301(b), .305. In the event that a governmental body fails to comply with section 552.301 in asking for an attorney general decision, the information requested in writing is presumed to be subject to disclosure and must be released, unless there is a compelling reason to withhold any of the requested information from the public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 630 at 3 (1994).

Technical asserts that "[o]ur original request was faxed to Collin County on 9-26-00 and ignored until we sent our certified letter on 10-20-00." The letter to which Technical refers appears to be the same letter, dated October 20, 2000, that the county treated as the written request for Idea's proposal. It further appears, based on the date stamped on Technical's letter, that the county received the letter on October 23. Thus, if the October 20, 2000, letter constitutes Technical's request for information, the county's request for this decision was timely under section 552.301(b). Technical does not submit a copy of the facsimile that it claims to have sent to the county on September 26. We also note that although the Public Information Act permits a request for information to be transmitted by facsimile or electronic mail, such a request must be addressed directly to the officer for public information or that individual's designee. *See* Gov't Code § 552.301(c). Whether Technical submitted a previous facsimile request to the county in compliance with section 552.301(c) presents questions of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). We therefore conclude that as the county apparently asked for this ruling within ten business days of the date of its receipt of Technical's letter of October 20, 2000, the county did so in compliance with section 552.301(b).

Accordingly, we next consider the remarks submitted by Idea in response to the county's notice under section 552.305. In its comments, Idea states:

[W]e respectfully request that Sections 2.6, 3, 4, 5, 10, 11, 12.1, 13.1 through and including 13.5, and 17, along with any resumes of the Idea staff, be redacted from any copy of our bid provided to [Technical].

We are of the view that [Technical] has requested our bid to obtain confidential, proprietary trade secret information . . . We seek protection for only those portions of our bid that contain such information. We are of the view that [Technical] would obtain an improper competitive advantage over Idea in follow-on work and in other possible business opportunities were it to receive a complete copy of our bid.

Section 552.110 of the Government Code protects the proprietary interests of private parties that submit information to governmental bodies by excepting from disclosure two types of information: (1) trade secrets and (2) 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. *See* Gov't Code § 552.110(a), (b). Idea's comments appear to invoke both components of section 552.110.

The Texas Supreme Court has adopted the definition of a "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) (emphasis added); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position on the application of the "trade secrets" component of section 552.110 to requested information, this office will accept a private person's claim for exception as valid under that component if that person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). In this instance, Idea refers in its comments to

“proprietary trade secret information.” However, Idea does not address the six factors that are relevant to the question of whether a private party has made a *prima facie* case under section 757 of the Restatement of Torts.² *Id.* We therefore conclude that Idea has not demonstrated that any of the information in question constitutes a protected trade secret under section 552.110(a) of the Government Code.

Idea also appears to raise section 552.110(b), which excepts from disclosure “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury likely would result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (stating that business enterprise must show by specific factual evidence that the release of information would cause it substantial competitive harm); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). We have carefully considered Idea’s comments and have thoroughly examined the portions of the requested proposal that Idea claims should be withheld from disclosure. We conclude, however, that Idea has not demonstrated that the designated portions of its proposal are excepted from disclosure under section 552.110(b). Accordingly, the county must release Idea’s proposal in its entirety. *See also* Open Records Decision No. 319 at 3 (1982) (stating that statutory predecessor to section 552.110 ordinarily does not protect information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing).

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

²The 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).

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).

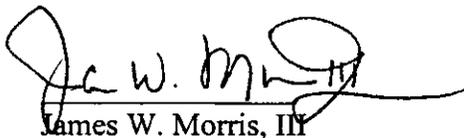
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142887

Encl: Submitted documents

cc: Mr. Matthew J. Adamczyk
Vice President, Business Development
Technical Facilities Consulting, Inc.
8111 LBJ Freeway, Suite 1150
Dallas, Texas 75251
(w/o enclosures)

Mr. Chip Rodgers
Idea Integration
2828 Routh Street
Suite 400, LB 17
Dallas, Texas 75201
(w/o enclosures)

Mr. John L. Marshall III
Senior Vice President and General Counsel
Modis Professional Services
1 Independent Drive
Jacksonville, Florida 32202-5060
(w/o enclosures)