



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2004

Mr. Clay T. Grover
Feldman & Rogers, LLP
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2004-0029

Dear Mr. Grover:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193737.

The Clear Creek Independent School District (the "district"), which you represent, received a request for the following information:

- "1. Copies of Bid documents, Public Notifications, and Bids received;
2. Architects drawings for the Barn renovations; and
3. A detailed list of where the money was spent in the areas of Electrical, plumbing, Structural, concrete, PA system bathrooms etc. in the amount of \$325,000.00"

You state that the district is providing the requestor with documents responsive to much of the information sought. You claim that the remaining requested information may implicate the proprietary interests of G&Z Contracting, Inc.; Parallax Builders, Inc.; Comex Corporation; Greytok Construction; DT Construction, Inc.; Morales Construction; Prince Contractors, Inc.; Stonewall Constructors; Dura Pier, Inc.; The Spigener Corp.; Stephens Construction Services; and Randall-Porterfield Architects, Inc. ("Randall"). You state, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why information pertaining to each third party

should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 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). We have received correspondence from Randall. We have reviewed their arguments and the submitted information.

We first note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the remaining third parties you notified have submitted any comments to this office explaining how release of the requested information would affect their proprietary interests. Thus, we have no basis to conclude that any of the remaining third parties has a protected proprietary interest in any of the submitted information. *See* Gov't Code § 551.110(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. 639 at 4 (1996), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

Randall asserts section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is deemed to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (information made confidential by statute), 611 at 1 (1992) (common-law privacy). Randall has cited no law, nor are we aware of any law, under which any of the submitted information relating to Randall is considered to be confidential for purposes of section 552.101. Therefore, none of the information relating to Randall is excepted from disclosure under section 552.101 of the Government Code.

Randall next contends that its information is excepted from disclosure under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," 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).

The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, 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 also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958). If the governmental body takes no position on the application of the "trade secrets" component of section 552.110 to the information at issue, this office will accept a private party's claim for exception as valid under that component if that party establishes a prima facie case for the exception, and no one submits an argument that rebuts the claim as a matter of law.¹ *See Open Records Decision No. 552 at 5 (1990)*. The private party must provide information that is sufficient to enable this office to conclude that the information at issue qualifies as a trade secret under section 552.110(a). *See Open Records Decision No. 402 at 3 (1983)*.

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See Open Records Decision No. 661 at 5-6 (1999)* (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Randall contends that it has a right to protect its interests, and thus that the submitted information related to Randall is excepted under section 552.110. We conclude, however,

¹The 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)*.

that Randall has not established that any of its information qualifies as a trade secret under section 552.110(a). Likewise, Randall has not provided the specific factual evidence required by section 552.110(b) that the release of its information would cause Randall substantial competitive harm. Thus, Randall has not demonstrated that any of the submitted information is excepted from disclosure under section 552.110 of the Government Code, and therefore all of the submitted 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 193737

Enc. Submitted documents

c: Ms. Barbara Stinson
2522 Bisontine
Friendswood, Texas 77546
(w/o enclosures)

G&Z Contracting, Inc.
17321 El Camino Real
Houston, Texas 77058
(w/o enclosures)

Parallax Builders, Inc.
P. O. Box 55332
Houston, Texas 77255-5332
(w/o enclosures)

Comex Corporation
P. O. Box 862
Deer Park, Texas 77536
(w/o enclosures)

Greytok Construction
1149 Ellsworth, Suite 404
Pasadena, Texas 77506
(w/o enclosures)

DT Construction, Inc.
1023 North Houston Avenue
Humble, Texas 77338
(w/o enclosures)

Morales Construction
907 Church Street
Eagle Lake, Texas 77434
(w/o enclosures)

Prince Contractors, Inc.
525 North Belt, Suite 172
Houston, Texas 77060-4014
(w/o enclosures)

Stonewall Constructors
2616 South Loop West, Suite 305
Houston, Texas 77054
(w/o enclosures)

The Spigener Corp.
5318 Pine Avenue Suite A
Pasadena, Texas 77503
(w/o enclosures)

Michael Porterfield
Randall-Porterfield Architects, Inc.
565 FM 270 North
League City, Texas 77573
(w/o enclosures)

Dura Pier, Inc.
P. O. Box 35008
Houston, Texas 77235
(w/o enclosures)

Stephens Construction Services
P. O. Box 439
Texas City, Texas 77592-0439
(w/o enclosures)