The ruling you have requested has been amended as a result of litigation and has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8845

OR2004-9651

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213691.

The City of Austin (the "city") received six requests for the vendor fees charged for collection services by Credit Systems International, Inc. ("Credit Systems") to Austin Energy.[1] One of the requestors also seeks the proposals submitted by Credit Systems and the second runner-up. You claim that some of the requested information may be excepted from disclosure under section 552.110 of the Government Code. You make no argument as to whether the submitted information is excepted from disclosure under this section. However, you state that the city has notified interested third party Credit Systems of the request for information pursuant to section 552.305 of the 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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain

[1]With regard to the questions raised by some of the requestors, we note that the Public Information Act ("Act") does not require a governmental body to answer questions. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to attempt to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990).

circumstances). We received correspondence from Credit Systems. We have considered its arguments and reviewed the submitted information.[2]

Credit Systems asserts 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. *See* Gov't Code § 552.110(a), (b). Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *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 [one] 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, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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.); Open Records Decision Nos. 552 at 2 (1990), 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;

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[2]We note that you have failed to submit the requested proposal of the second runner-up. To the extent that such a proposal and any other responsive information existed upon the city's receipt of the requests for information, we assume the city has released it to the requestor. If not, the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

> (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 Nos. 319 (1982), 306 (1982), 255 (1980), 232 (1979). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990). 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).

Section 552.110(b) protects "[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 to disclosure 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. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999).

Having reviewed the submitted brief, we conclude that Credit Systems has established that a portion of its information is excepted under section 552.110. We have marked the information that the city must withhold. However, we conclude that Credit Systems has not demonstrated that the remainder of its information qualifies as trade secret for purposes of section 552.110(a) of the Government Code. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor generally not applicable to information relating to organization and personnel, market studies, qualifications and experience, and pricing). We also find that Credit Systems has not made the specific factual or evidentiary showing required under section 552.110(b) that the release of the remainder of its information would likely result in substantial competitive harm to it. We note that the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see*

generally Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* Open Records Decision No. 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Accordingly, pursuant to section 552.110, the city must withhold only the information we have marked.

Further, we note that the submitted insurance policy numbers are confidential under section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Thus, pursuant to this section, the city must withhold the insurance policy numbers we have marked.

Finally, we note that a portion of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, we conclude that the city must withhold the information we have marked under sections 552.110 and 552.136 of the Government Code. All remaining information must be released in compliance with copyright law for any information protected by copyright.

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).

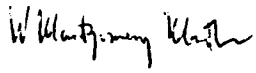
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



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Open Records Division

WMM/krl

Ref: ID# 213691

Enc: Submitted documents

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Filed in The District Court
of Travis County, Texas

JUL 27 2006
At 8:55A. M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. GN403895

CREDIT SYSTEMS INTERNATIONAL, INC., Plaintiff,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
CITY OF AUSTIN, TEXAS, D/B/A/ AUSTIN ENERGY, AND GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendants.	§	345TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Credit Systems International, Inc. (CSII) and Defendants City of Austin, Texas, d/b/a/ Austin Energy (City) and Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestors, Linebarger Goggan Blair & Sampson, LLP, Municipal Services Bureau, Outsourcing Solutions Inc., Risk Management Alternative, Sumaj, and FAMS, Inc., were sent reasonable notice of this setting and of the parties' agreement that the City must withhold some of the information at issue; that the requestors were also informed of their right to intervene in the suit to contest the withholding of this information; and that none of the requestors have informed the parties of their intention to intervene. Neither has any requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. CSII's 2000 and 2004 Proposals for collection services for Austin Energy contain trade secrets and commercial and financial information and such information is excepted from disclosure by Tex. Gov't Code Ann. § 552.110, as follows:

Bid Proposals	**Bates No.**	**withhold**	**disclose**
2000 Proposal			
cover page	1		✓
Executive Summary	2-3		✓
Part I Business Organization	4		✓
Part II-System Concept and Solution	5,7		✓
	6	.110(b), as marked	remaining
Part III-Program	9-15	.110(b)	
Part IV-Project Management Structure	16, 17		✓
Part V-Prior Experience	18	.110(a), as marked	remaining
Part VI-Personnel	19-20		✓
Parts VI, VIII, IX, X, XI, XII [no Part VII]	21-26		✓
Part XIII, Cost Proposal	27-28	.110(a), as marked	remaining
Exceptions	29	.110(b), as marked	remaining
Title Pages: Documents required w/Proposal & Addendums	30-31		✓
Letter Samples	32-34, 38-39		✓
Report Samples	35-37		✓
Exhibit D-Proof of Insurance	40-44	.136 per ruling, as marked	remaining
Exhibit E-Quality Assurance	45-46	46: .110(a)	45
Exhibit B-Collector Scripts	47-48	48: .110(a)	47
Exhibit F- Organizational Chart	49-50		✓

Bid Proposal	Bates No.	withhold	disclose
2004 Proposal			
Executive Summary	51-52		✓
Part I-Business Organization	53		✓
Section 1A-Part 1-Financial Information	54-55		✓
Financial Statements (on file w/the City)	56-58 all pages	.110(b) .110(b)	
Part II-System Concept and Solution	59-60, 62-64		✓
	61	.110(b), as marked	remaining
Part III-Program	65-77	.110(b)	
Part IV-Project Management Structure	78-79		✓
Part V-Prior Experience	80	.110(a), as marked	remaining
Part VI-Personnel	81-82		✓
Section 1.K., Cost Schedule	83	.110(a), as marked	remaining
Title Pages: Documents required w/Proposal & Addendums	84-85, 87		✓
United Healthcare Letter	86		✓
Flow Charts	89, 91	.110(b)	88, 90
Letter Samples	92-98, 104–05		✓
Collector Scripts	99-100	100: .110(a)	99
Report Samples	101-03		✓
Client Services Policy (Quality Assurance)	106-07	107: .110(a)	106
American Collector Assn. Certificate	108-09		✓

2. The City must release to each requestor the information pertaining to CSII that is responsive to the request for information of each requestor and not held excepted from disclosure by Letter Ruling 2004-9651 or by Paragraph 1 of this Judgment.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendants and is a final judgment.

SIGNED this the 27th day of July, 2006.

PRESIDING JUDGE

APPROVED:

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Letter Ruling 2004-9651 or by Paragraph 1 of this Judgment.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendants and is a final judgment.

SIGNED this the _____ day of _____, 2006.

_____
PRESIDING JUDGE

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