



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 12, 2005

Mr. Mike Stafford  
County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2005-09247

Dear Mr. Stafford :

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# 234116.

The Harris County Purchasing Department (the "department") received a request for the entire winning proposal of Job Number 04/0419 Request For Proposal: Term Contract for Job Order Contracting for Small and Large Projects in Harris County. You state that the submitted information may contain proprietary information, and thus, pursuant to section 552.305 of the Government Code, you notified Centennial Contractors Enterprises, Inc. ("Centennial") of the request and of the company's right to submit arguments to this office as to why the information 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 Centennial. We have considered their arguments and reviewed the submitted information.

Initially, we note that while Centennial claims an exception to the disclosure of documents entitled "Supplement A, Major Construction Projects in Progress" and "Supplement B, Centennial's Competed JOC Projects," the department did not submit these documents to this office. This ruling does not address the applicability of Centennial's claimed exception for information that has not been submitted for our review by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body seeking attorney general's opinion under the Act must submit a copy or representative samples of the specific information requested).

Next, we note that while Centennial states that sections 552.101, 552.102, and 552.104 of the Government Code apply to their submitted proposal, it has provided no comments explaining why these exceptions should be applicable. We therefore presume Centennial no

longer intends to claim sections 552.101, 552.102, and 552.104 as exceptions to disclosure. See Gov't Code § 552.305(d)(2)(B).

Now we turn to the argument for the submitted information. Centennial states that the portions of its proposal marked confidential are excepted under section 552.110 of the Government Code. Section 552.110 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. 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). 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. Gov’t Code § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Centennial claims that certain portions of its proposal, specifically the marked portions of the Executive Summary, Supplement C, Supplement E, Audited Financial Statement, Attachment h, Section V, and Best and Final Offer, are protected under section 552.110 of the Government Code. Upon review, we find that Centennial has demonstrated that most of the information at issue is excepted from disclosure under section 552.110 of the Government Code. However, the organizational information and employee biographies found in Section V, which we have marked, are not excepted under section 552.110 and must be released. *See* Open Records Decision No. 319 at 2 (1982) (finding information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). As Centennial does not seek to withhold the remaining portions of its proposal, that 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).

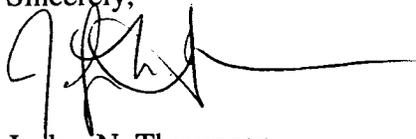
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Jadlyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krf

Ref: ID# 234116

Enc. Submitted documents

c: James Bole, Jr.  
RHJ-JOC, Inc.  
Plaza Park Business Center  
7643 South Freeway  
Houston, TX 77021

Debra Dowden-Crockett  
Centennial Contractors Enterprises, Inc.  
8500 Leesburg Pike, Suite 500  
Vienna, VA 22182  
(w/o enclosures)