



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2006

Ms. Carol Longoria  
Public Information Coordinator  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2006-01742A

Dear Ms. Longoria:

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# 242734.

The University of Texas at Dallas (the "university") asks this office to re-examine Open Records Letter No. 2006-01742 (2006). When this office determines that an error was made in the decisional process under sections 552.301 and 552.306 of the Government Code and that the error resulted in an incorrect decision, we will correct the previously issued ruling. As we have determined that Open Records Letter No. 2006-01742 is incorrect, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2006-01742 and serves as the correct ruling.

The University of Texas at Dallas (the "university") received a request for proposals submitted in response to RFP# JOCRFP05. While you claim no exceptions to disclosure on behalf of the university regarding the requested information, you state that it may contain proprietary information excepted from disclosure under the Act. Accordingly, pursuant to section 552.305 of the Government Code, you state, and provide documentation showing, that you notified the following interested third parties of the request and of their right to submit arguments to this office as to why the information at issue should not be released to the requestor: Centennial Contractors Enterprises, Inc. ("Centennial"); Nouveau Technology Services, L.P. ("Nouveau"); The Cooperative Purchasing Network/Applied Innovative Management, Inc. ("TCPN"); and Jamail General Contractors/Construction Management, Inc. ("Jamail"). 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 to disclosure in certain circumstances). We have received correspondence from Centennial and Nouveau. We have considered all submitted arguments and reviewed the submitted information.

Initially, we 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, TCPN and Jarnail have not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Therefore, these companies have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *See, e.g., id.* § 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). Accordingly, the university may not withhold any of the submitted information on the basis of any proprietary interest TCPN and Jamail may have in this information.

Next, we note that, while Centennial raises sections 552.101 and 552.102 of the Government Code, it has not provided any arguments in support of these claims. Thus, Centennial has not demonstrated that any of its information is confidential for purposes of sections 552.101 and 552.102. *See* Gov't Code §§ 552.301, .302.

Centennial also asserts that its information is excepted from disclosure under section 552.104 of the Government Code. We note, however, that section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to the governmental body's interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). The university has not argued that the release of the submitted information would harm its interests in a particular competitive situation. Therefore, the submitted information may not be withheld pursuant to section 552.104.

Centennial and Nouveau claim that portions of their respective proposals are excepted from disclosure 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).

Upon review of the arguments submitted by Centennial and Nouveau and the information at issue, we find that Centennial and Nouveau have made *prima facie* cases that portions of their information are protected as trade secrets. Moreover, we have received no arguments that would rebut these claims as a matter of law. Thus, we have marked the portions of Centennial’s and Nouveau’s proposals that the university must withhold pursuant to section 552.110(a).<sup>1</sup> We find, however, that Centennial and Nouveau have not presented *prima facie* claims that any of their remaining information qualifies as a trade secret under section 552.110(a).<sup>2</sup> We likewise find that Centennial and Nouveau have not sufficiently shown that the release of any of their remaining information would be likely to cause them substantial competitive harm for purposes of section 552.110(b). *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative, 319 at 2 (1982) (finding information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). Furthermore, we note that the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest

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<sup>1</sup>As we are able to make this determination, we need not address Centennial’s remaining argument against disclosure for this information.

<sup>2</sup>We note that some of the information Centennial seeks to withhold is publicly available on its website.

in disclosure with competitive injury to company). *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). We therefore conclude that none of the remaining information at issue is excepted from disclosure under section 552.110.

We note that the remaining information includes insurance policy numbers. Section 552.136 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. Accordingly, the university must withhold the insurance policy numbers we have marked pursuant to section 552.136.

The remaining information also includes social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the university must withhold the social security numbers we have marked under section 552.147.<sup>3</sup>

Finally, we note that the submitted documents contain information that is protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information must comply with the copyright law, however, and is not required to furnish copies of records that are copyrighted. *Id.* If a member of the public wishes to make copies of copyrighted materials, he or she 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 at 8-9 (1990).

In summary, the university must withhold the following: (1) the information we have marked pursuant to section 552.110(a) of the Government Code; (2) the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code; and (3) the social security numbers we have marked pursuant to section 552.147 of the Government Code. The remaining information must be released, but any copyrighted information must be released in accordance with copyright law.

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

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<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



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Open Records Division

LJ/CEC/sdk

Ref: ID# 242734

Er.c. Submitted documents

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