



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2006

Ms. Wendy E. Ogden
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-06282

Dear Ms. Ogden:

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# 250375.

The City of Corpus Christi (the "city") received a request for any documents related to the implementation of the city's wireless network, including any maps that depict the geographic progression of the network expansion. The requestor also asks for the city's request for proposals ("RFP") for the wireless network system, Northrop Grumman Corp.'s ("Northrop") response to the RFP, and the resulting contract between the city and Northrop. You claim that a portion of the submitted information is excepted from disclosure under section 552.101¹ of the Government Code. You also claim that the submitted information may contain proprietary information subject to exception under the Act, but make no arguments and take no position as to whether this information is excepted from disclosure. However, pursuant to section 552.305 of the Government Code, you notified Northrop, the interested third party, of the request and of its opportunity to submit comments to this office. *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). This office has received correspondence from Northrop. The city

¹Although you assert that Exhibit A is confidential under sections 418.176-.182 of the Government Code as incorporated by section 552.108, the proper exception is section 552.101.

has submitted the requested information for our review. We have considered Northrop's comments and reviewed the submitted information.

Initially, we note that Exhibit B is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Pursuant to section 552.022, Exhibit B must be released, unless it is expressly confidential under other law. Northrop raises section 552.110 of the Government Code for a portion of the responsive information at issue. Because this claim is considered other law for the purposes of section 552.022, we will address Northrop's arguments accordingly.

You claim that Exhibit A is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert that the information in Exhibit A is confidential under section 418.181, which provides that "[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." Gov't Code § 418.181.

In this instance, you explain that Exhibit A contains the design of the entire city-wide Wi-Fi system, the primary source of data communication to the city's first responders. You further explain that this information identifies the technical details and vulnerabilities of this system "which the city uses to promote security, governance, and health and safety." Based on your arguments and our review of the information at issue, we conclude that a portion of Exhibit A identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See generally* Gov't Code § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance,

public health and safety, and functions vital to the state or the nation"). Therefore, the information we have marked in Exhibit A is confidential under section 418.181 of the Government Code and excepted from disclosure under section 552.101 of the Government Code.

You also assert that the remaining information in Exhibit A is confidential under section 418.179(a)(2) of the Government Code. Section 418.179(a) provides that information is confidential if it

(2) relates to the details of the encryption codes or security keys for a public communications system.

Gov't Code § 418.179(a)(2). Based on your representations and our review of the information at issue, we find that you have not demonstrated that the requested information relates to the details of the encryption codes or security keys for a public communications system. *See id.* § 418.179(a)(2). Thus, none of the remaining information may be withheld on this basis.

Northrop contends that information relating to the contract and to its proposals to the city dated June 13, June 22, July 29, and August 15, 2005 is excepted from disclosure under section 552.110 of the Government Code. However, the city did not submit Northrop's proposals to the city dated June 13, June 22, July 29, and August 15, 2005 to this office for review. Accordingly, this ruling does not address information related to Northrop beyond what the city submitted to us for review and is limited to the information the city submitted as responsive to the instant request. *See Gov't Code § 552.301(e)(1)(D)* (governmental body requesting decision from attorney general must submit copy of specific information requested).

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 id.* § 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 id.* § 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 exempted 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. *See id.*; *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Having considered Northrop's arguments and reviewed the submitted information at issue, we find that Northrop has not established by specific factual evidence that any of Exhibit B is excepted from disclosure as either trade secret information under section 552.110(a) or commercial or financial information the release of which would cause Northrop substantial competitive harm under section 552.110(b). *See* RESTATEMENT OF TORTS § 757 cmt. b (1939) (information is generally not trade secret unless it constitutes "a process or device for continuous use in the operation of the business"); Open Records Decision Nos. 552 at 5-6 (1990), 661 (1999) (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). Specifically, we note that the information Northrop seeks to withhold includes pricing information. We note that the pricing information of a winning bidder is generally not excepted under section 552.110. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). Thus, none of the information in Exhibit B may be withheld under section 552.110. As you make no other arguments against disclosure, Exhibit B must be released to the requestor.

In summary, the information we have marked in Exhibit A is confidential under section 418.181 of the Government Code and excepted from disclosure under section 552.101 of the Government Code. The remaining information must be released to the requestor.

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 250375

Enc. Submitted documents

c: Ms. Sandra J. Bockelman
822 Indiana Avenue
Corpus Christi, Texas 78401
(w/o enclosures)