



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 15, 2006

Ms. Yushan Chang
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2006-10768

Dear Ms. Chang:

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# 259245.

The Houston Airport System (the "system") received a request for revenue data of off-airport parking companies for a specified time period. Although you raise no exception to disclosure on behalf of the system, you assert that the release of the requested information may implicate the proprietary interests of third parties. Accordingly, you notified the interested third parties, Airpark, Allright and Service Park, Fast Park, Park n Fly, Xpress Park Houston, Ace Park N Ride ("Ace"), Dollar Rent-a-Car and Thrifty Rent-a-Car, Preflight Airport Park, AMPCO Jet Park, PCAA SP LLC, Park-N-Go d/b/a/ Sun Park ("Sun Park"), and E-Z Rent a Car, of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released); *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 the Act in certain circumstances). We have reviewed the submitted arguments as well as the submitted information.

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, only Ace and Sun Park have submitted arguments to this office explaining how release of the requested information would affect their proprietary interests. Therefore, we have no basis to conclude that the release of the requested information will harm the proprietary interests of Airpark, Allright and Service Park, Fast Park, Park N Fly, Xpress Park Houston, Dollar Rent-a-Car and Thrifty Rent-a-Car, Preflight Airport Park, AMPCO Jet Park, PCAA SP LLC, or E-Z Rent a Car. See Gov't Code § 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. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the system must release the submitted information reports pertaining to Airpark, Allright and Service Park, Fast Park, Park N Fly, Xpress Park Houston, Dollar Rent-a-Car and Thrifty Rent-a-Car, Preflight Airport Park, AMPCO Jet Park, PCAA SP LLC, and E-Z Rent a Car.

Initially, we address Ace's contention that a portion of the submitted information is not responsive to the request for information. Ace contends that the request at issue is only a request for the combined total of all company reports rather than the individual company revenue reports, and thus the individual reports are not responsive to the request at issue. We note that a governmental body must make a good-faith effort to relate a request to information that it holds. See Open Records Decision No. 561 at (1990) (construing statutory predecessor). After reviewing the entire request for information, we find that the system has made a good-faith effort to relate the request for information to the information that the system maintains, and that the individual revenue reports contained in the submitted information are responsive to the request at issue. Thus, we will examine the arguments for exception from disclosure under the Act.

Ace and Sun Park contend that the information at issue is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (a) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (b) 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. Gov't Code § 552.110(a), (b).

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); see also Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is

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 single or ephemeral events 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). 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. Gov’t Code § 552.110(b); *see also Nat’l 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 Ace and Sun Park and the information at issue, we find that both Ace and Sun Park have failed to demonstrate how the revenue data meets the definition of a trade secret under section 552.110(a) of the Government Code. Furthermore, Sun Park does not explain how release of the requested revenue data would cause its company substantial competitive harm for the purposes of section 552.110(b) of the Government Code. *See generally* Gov't Code § 552.022(a)(3) (terms of contract with governmental body are generally not excepted from public disclosure); Open Records Decision Nos. 541 *at* 8 (1990) (public has interest in knowing terms of contract with state agency), 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110(b), business must show by specific factual evidence that substantial competitive injury would result from release of the particular information at issue). Thus, the system may not withhold the revenue data under section 552.110 of the Government Code.

Sun Park further contends that the revenue data is excepted under section 552.131 of the Government Code. Section 552.131(a) provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

- (1) a trade secret of the business prospect; or
- (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.

Gov't Code § 552.131(a). Sun Park does not explain, nor does the submitted document reflect, that the system is negotiating with Sun Park or any other party to locate, stay, or expand in or near the airport. Moreover, we have already determined that the revenue statement may not be withheld as Sun Park's proprietary commercial or financial information under section 552.110(b). Thus, we find that section 552.131 does not apply in this instance. The system must release the submitted information 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).

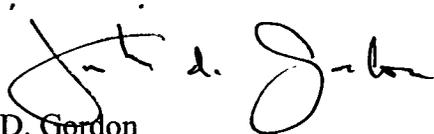
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 259245

Enc. Submitted documents

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