



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2008

Ms. Cynthia Contreras Gutierrez  
Law Office of Cynthia Contreras Gutierrez  
5518 South Jackson Road  
Edinburg, Texas 78539

OR2008-06193

Dear Ms. Gutierrez:

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# 309872.

The Edinburg Economic Development Corporation (the "EEDC"), which you represent, received a request for information involving the Shoppes at Rio Grande Valley and a specified time interval. You claim that most of the requested information is excepted from disclosure under sections 552.105 and 552.110 of the Government Code. You also believe that the information implicates the proprietary interests of First Hartford Realty Corporation ("First Hartford"). You notified First Hartford of this request for information and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We received correspondence from an attorney for First Hartford. We have considered all of the submitted arguments and have reviewed the information you submitted.

We begin with First Hartford's claim under section 552.107(2) of the Government Code, which excepts information from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). First Hartford states that the 398<sup>th</sup> District Court of Hidalgo County, Texas entered a protective order "protecting these or like documents." First Hartford has submitted a copy of the order. We note that the EEDC does not appear either to be or to have been a party to the litigation in which the order was entered. Moreover, First Hartford does not explain, and the order itself does not otherwise reflect, how or why the order would be applicable either to the EEDC or to information maintained

---

<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

by the EEDC. We therefore conclude that the EEDC may not withhold any of the submitted information on the basis of the protective order under section 552.107(2) of the Government Code.

Next, we address the other claimed exceptions to disclosure. Both the EEDC and First Hartford raise section 552.105 of the Government Code, which excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. We note that section 552.105 protects the interests of governmental bodies such as the EEDC and not those of private parties such as First Hartford. *See* Open Records Decision No. 564 at 2 (1990) (statutory predecessor was designed to protect governmental body's planning and negotiating position with respect to particular transactions). Therefore, we consider only the EEDC's claim under this exception. Section 552.105 protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. *See* Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564. In this instance, the EEDC argues only that some of the submitted information "is not required to be disclosed because the information involved the real property and certain important aspects of the same." Having considered this argument, we find that the EEDC has not demonstrated that section 552.105 is applicable to any of the information at issue. We therefore conclude that none of the submitted information is excepted from disclosure under section 552.105 of the Government Code.

Both the EEDC and First Hartford also raise section 552.110 of the Government Code, which protects the proprietary interests of private parties with respect to two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (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 § 552.110(a)-(b).

The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

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 a single or ephemeral event 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); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). If a governmental body takes no position on the application of the "trade secrets" aspect of section 552.110 to the information at issue, this office will accept a private person's claim for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law.<sup>2</sup> *See* Open Records Decision No. 552 at 5 (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. *See* Open Records Decision No. 402 (1983).

---

<sup>2</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other 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 [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (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 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Section 552.110(b) 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* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

The EEDC contends that section 552.110(b) is applicable to most of the submitted information. First Hartford argues that both aspects of section 552.110 are applicable in this instance. Having considered all of the parties' arguments, we have marked customer information that the EEDC must withhold under section 552.110(a). We otherwise conclude that First Hartford has not demonstrated that any of the remaining information at issue qualifies as a trade secret under section 552.110(a). We also conclude that neither the EEDC nor First Hartford has made the specific factual or evidentiary demonstration required by section 552.110(b) that release of any of the remaining information would cause First Hartford substantial competitive harm. We therefore conclude that the EEDC may not withhold any of the remaining information under section 552.110.

We note that the EEDC may be required to withhold some of the submitted information under section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of an official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information that the EEDC must withhold under section 552.117(a)(1) if the official or employee concerned timely requested confidentiality for the information under section 552.024.

We also note that the submitted information includes personal e-mail addresses. Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure.<sup>4</sup> Gov't Code § 552.137(a)-(b).

---

<sup>3</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>4</sup>Section 552.137 also is a mandatory exception and may not be waived. Gov't Code §§ 552.007, .352; ORD 674 at 3 n.4.

The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that do not appear to fall within the scope of section 552.137(c). The EEDC must withhold the marked e-mail addresses under section 552.137 unless the owner of an e-mail address has affirmatively consented to its disclosure.

Lastly, we note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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: (1) the EEDC must withhold the information that we have marked under section 552.110 of the Government Code; (2) the information that we have marked under section 552.117(a)(1) of the Government Code must be withheld if the official or employee concerned timely requested confidentiality for the information under section 552.024 of the Government Code; and (3) the EEDC must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the owner of an e-mail address has affirmatively consented to its public disclosure. The rest of the submitted information must be released. Any information that is protected by copyright 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 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

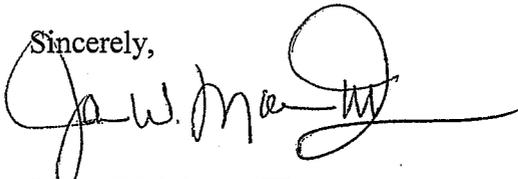
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 challenge 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 309872

Enc: Submitted documents

c: Mr. George B. Parks, Jr.  
George Parks & Associates  
11765 West Avenue #182  
San Antonio, Texas 78216  
(w/o enclosures)

Mr. David N. Calvillo  
Calvillo Law Firm  
711 Nolana Loop Suite 105  
McAllen, Texas 78504  
(w/o enclosures)