



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2008

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

Mr. Clark Stockton Lord  
Vinson & Elkins  
1001 Fannin Street Suite 2500  
Houston, Texas 77002-6760

OR2008-07585

Dear Ms. Chang and Mr. Lord:

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# 311677.

The City of Houston (the "city") received a request for (1) information relating to the selection of consultants for five specified city projects; (2) information provided to the Coastal Water Authority (the "authority") relating to the selection of consultants in connection with the Luce Bayou Interbasin Transfer Project; and (3) responses to any inquiries received by the city concerning certain specified business entities during a specified time interval. The authority, which Mr. Lord represents, received a request from the same requestor for information relating to the selection of consultants in connection with the Luce Bayou Interbasin Transfer Project. The city states that it will release some of the requested information. Neither the city nor the authority takes any position on the public availability of the information that both the city and the authority submitted. However, both the city and the authority believe that the submitted information may implicate the interests of third parties. Both the city and the authority notified the interested parties of these requests for

information and of the parties' right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> We received correspondence from Pate Engineers, Inc. ("Pate"). We have considered Pate's arguments and have reviewed the submitted information. We assume that the authority has released any other information that is responsive to the request that it received, to the extent that such information existed when it received the request. If not, then the authority must release any such information at this time.<sup>2</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We first note, and the city acknowledges, that it failed to comply with its deadlines under section 552.301 of the Government Code in requesting this decision. The information that the city has submitted is therefore presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will determine whether the city must withhold any of the information that it has submitted to protect the interests of the third parties.

We note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, only Pate has submitted arguments against disclosure of any of the submitted information. Therefore, because none of the other third parties has demonstrated that any of the information at issue is proprietary for the purposes of the Act, neither the city nor the authority may withhold any of the submitted information on the basis of any interest that any of the other third parties may claim. See Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address Pate's claim under section 552.110 of the Government Code. This exception 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

---

<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).

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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>3</sup> *See* ORD 552 at 5. However, we cannot conclude that

---

<sup>3</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(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).

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* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Pate argues that all of its information should be withheld from disclosure. Pate also contends that some of its information constitutes trade secrets.<sup>4</sup> Having considered all of Pate's arguments and reviewed the company's information, we find that Pate has not demonstrated that any of the information at issue qualifies as a trade secret for the purposes of section 552.110(a). We also find that Pate has not made the specific factual or evidentiary demonstration required by section 552.110(b) that release of any of the information at issue would cause Pate substantial competitive harm. We therefore conclude that the city may not withhold any of Pate's information under section 552.110 of the Government Code. *See* Open Records Decision Nos. 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 was entirely too speculative), 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing).

We note that the city may be required to withhold a small portion of its information under section 552.117 of the Government Code.<sup>5</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 a current or former 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

---

<sup>4</sup>We note that Pate's arguments encompass information that we did not receive from the city. This decision is applicable only to the information that the city submitted to this office in requesting this decision. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit specific information at issue or representative samples if information is voluminous).

<sup>5</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).

section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information that the city must withhold under section 552.117(a)(1) if the city official concerned timely requested confidentiality for the marked information under section 552.024. The rest of the submitted 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 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).

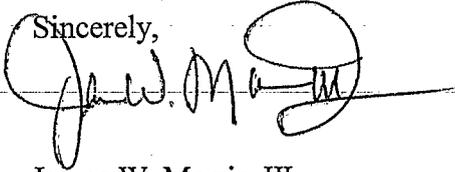
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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# 311677

Enc: Submitted documents

c: Mr. Joel J. Rhiner  
Stein, Ray & Harris, LLP  
222 West Adams Street Suite 1800  
Chicago, Illinois 60606  
(w/o enclosures)

Ms. Debra L. Anglin  
Pate Engineers, Inc.  
13333 Northwest Freeway Suite 300  
Houston, Texas 77040  
(w/o enclosures)

Mr. Mark W. Litzmann  
AIA Engineers, Ltd.  
1011 Highway 6 South Suite 117  
Houston, Texas 77077  
(w/o enclosures)

Mr. David C. Scholler  
Brown & Gay Engineers, Inc.  
11490 Westheimer Suite 700  
Houston, Texas 77077  
(w/o enclosures)

Mr. Chris Canonico  
CDM  
3050 Post Oak Boulevard Suite 300  
Houston, Texas 77056  
(w/o enclosures)

Mr. Michael E. Lucchesi  
CH2M Hill  
7600 West Tidwell Road Suite 600  
Houston, Texas 77040-5719  
(w/o enclosures)

Mr. Mark C. Dessens  
CLR, Inc.  
7600 West Tidwell Suite 400  
Houston, Texas 77040  
(w/o enclosures)

Mr. S. Ebow Coleman  
C3S, Inc.  
P.O. Box 820608  
Houston, Texas 77282-0608  
(w/o enclosures)

Mr. Wendell L. Barnes  
Carter & Burgess, Inc.  
55 Waugh Drive Suite 800  
Houston, Texas 77007-5833  
(w/o enclosures)

Mr. Charles D. Gooden, Jr.  
Charles D. Gooden Consulting Engineers, Inc.  
2656 South Loop West Suite 380  
Houston, Texas 77054-2639  
(w/o enclosures)

Mr. Pete Patel  
Chiang, Patel & Yerby, Inc.  
2925 Briarpark Suite 850  
Houston, Texas 77042  
(w/o enclosures)

Mr. Michael D. Lacy  
CivilTech Engineering, Inc.  
11821 Telge Road  
Cypress, Texas 77429  
(w/o enclosures)

Mr. James B. Andrews  
Claunch & Miller, Inc.  
4635 Southwest Freeway Suite 1000  
Houston, Texas 77027-7169  
(w/o enclosures)

Mr. John Odis Cobb  
Cobb Fendley & Associates  
13430 Northwest Freeway Suite 1100  
Houston, Texas 77040-6153  
(w/o enclosures)

Mr. Samuel W. Kruse, Jr.  
Costello, Inc.  
9990 Richmond Avenue Suite 450  
Houston, Texas 77042  
(w/o enclosures)

Mr. Wayne G. Ahrens  
Dannenbaum Engineering Corporation  
P.O. Box 22292  
Houston, Texas 77227  
(w/o enclosures)

Mr. James R. Koogler  
Espey Consultants, Inc.  
450 Gears Road Suite 205  
Houston, Texas 77067  
(w/o enclosures)

Mr. Brian Walls  
Freese & Nichols, Inc.  
10375 Richmond Avenue Suite 1450  
Houston, Texas 77042  
(w/o enclosures)

Mr. Ramesh Gunda  
Gunda Corporation, Inc.  
7322 Southwest Freeway Suite 1802  
Houston, Texas 77074  
(w/o enclosures)

Mr. Tod J. Henning  
H2B, Inc.  
P.O. Box 926004  
Houston, Texas 77292  
(w/o enclosures)

Ms. Kristen Hennings  
Half Associates  
3701 Kirby Drive Suite 1290  
Houston, Texas 77098  
(w/o enclosures)

Mr. Jim Gonzales  
IDC Inc.  
11111 Wilcrest Green Suite 250  
Houston, Texas 77042  
(w/o enclosures)

Mr. Vasant Hariani  
Infrastructure Associates, Inc.  
520 Post Oak Boulevard Suite 300  
Houston, Texas 77027  
(w/o enclosures)

Mr. Jon N. Strange  
JNS Consulting Engineers, Inc.  
17171 Park Row Suite 160  
Houston, Texas 77084  
(w/o enclosures)

Mr. Robert E. Ybanez  
Jones & Carter, Inc.  
6335 Gulfton Suite 100  
Houston, Texas 77081-1169  
(w/o enclosures)

Mr. Sudhakar Kalaga  
KIT Professionals, Inc.  
2825 Wilcrest Drive Suite 600  
Houston, Texas 77042  
(w/o enclosures)

Mr. Kenneth Sheblak  
KMS Engineering, LLP  
2550 Gray Falls Drive Suite 215  
Houston, Texas 77077  
(w/o enclosures)

Mr. D. Wayne Klotz  
Klotz Associates  
1160 Dairy Ashford Suite 500  
Houston, Texas 77079  
(w/o enclosures)

Mr. Darrell Morrison  
LJA Engineering & Surveying, Inc.  
2929 Briarpark Drive Suite 600  
Houston, Texas 77042-3703  
(w/o enclosures)

Mr. Robert C. C. Lin  
Lin Engineering, Inc.  
11806 Wilcrest Suite 200  
Houston, Texas 77031  
(w/o enclosures)

Mr. J. Anthony Boyd  
Lockwood, Andrews & Newnam, Inc.  
2925 Briarpark Drive  
Houston, Texas 77042-3720  
(w/o enclosures)

Dr. John M. D'Antoni  
MWH  
5100 Westheimer Suite 580  
Houston, Texas 77056-5507  
(w/o enclosures)

Mr. F. William Othon  
Othon, Inc.  
11111 Wilcrest Green Drive Suite 128  
Houston, Texas 77042  
(w/o enclosures)

Mr. Costas Georghiou  
PGAL  
5555 San Felipe Suite 1000  
Houston, Texas 77056  
(w/o enclosures)

Mr. David L. Collins  
PTI, Inc.  
2925 Briarpark Drive Suite 950  
Houston, Texas 77042  
(w/o enclosures)

Mr. Vishwa Bahl  
Ratnala & Bahl, Inc.  
11767 Katy Freeway Suite 510  
Houston, Texas 77079  
(w/o enclosures)

Mr. Frank S. Marino  
S&B Infrastructure, Ltd.  
3535 Sage Road  
Houston, Texas 77056  
(w/o enclosures)

Mr. Epifanio E. Salazar, Jr.  
SES Horizon Consulting Engineers, Inc.  
10101 Southwest Freeway Suite 400  
Houston, Texas 77074  
(w/o enclosures)

Mr. Timothy M. Aschoff  
Sparks-Barlow-Barnett, Inc.  
11000 Richmond Avenue Suite 300  
Houston, Texas 77042  
(w/o enclosures)

Ms. R. Carla Thompson  
Sunland Group  
10497 Town & Country Way Suite 550  
Houston, Texas 77024  
(w/o enclosures)

Mr. Lyle E. Henkel  
Terra Associates, Inc.  
3000 Wilcrest Drive Suite 200  
Houston, Texas 77042  
(w/o enclosures)

Mr. Ralph M. Shapot  
Weston Solutions, Inc.  
5599 San Felipe Suite 700  
Houston, Texas 77056  
(w/o enclosures)

Mr. Giti Zarinkelk  
Zarinkelk Engineering Services, Inc.  
3033 Chimney Rock Suite 630  
Houston, Texas 77056  
(w/o enclosures)