



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2008

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2008-10459

Dear Ms. Constantine:

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# 317744.

The Dallas-Fort Worth International Airport (the "airport") received a request for 1) the request for proposal document and addenda pertaining to the Terminal Link shuttle bus, 2) each bid proposal received, and 3) related correspondence. You state that the airport is releasing portions of the bid proposals and the remaining requested information. The airport takes no position on whether the remaining portions of the bid proposals are excepted from disclosure, but states that release of this information may implicate the proprietary interests of Ace Parking ("Ace"), AMPCO System Parking ("AMPCO"), Huntleigh Corporation ("Huntleigh"), LP Transits ("LP"), RPS/LAZ Parking ("LAZ"), and Standard Parking ("Standard"), collectively, ("the bidders"). Accordingly, you inform us, and provide documentation showing, that you notified the bidders of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the submitted arguments and have 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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from LAZ or Ace. We thus have no basis for concluding that any portion of the proposals submitted by LAZ and Ace constitutes the proprietary information of these companies. Accordingly, the proposals for LAZ and Ace must be released in their entirety.

Next, Standard and Huntleigh both state that their proposals were marked as confidential. Additionally, AMPCO argues that when it submitted its proposal, it had a reasonable expectation of privacy. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, the submitted proposals of AMPCO, Standard, and Huntleigh must be released unless they fall within an exception to disclosure, notwithstanding any expectation or agreement to the contrary.

Next, Standard raises section 552.104 of the Government Code, which excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. We note, however, that section 552.104 only protects the interests of a governmental body and 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). In this instance, the airport has not argued that the release of any portion of the submitted information would harm its interests in a particular competitive situation under section 552.104. Accordingly, we conclude that the airport may not withhold any portion of the proposal submitted by Standard under section 552.104 of the Government Code.

AMPCO, Huntleigh, LP, and Standard argue that portions of the requested information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov’t Code § 552.110(a). 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. 1957); 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); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. 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. *Id.* § 552.110(b); *see also* 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).

Both AMPCO and Huntleigh contend that portions of their proposals are trade secrets excepted under section 552.110(a). However, neither AMPCO nor Huntleigh has explained how any portion of their respective proposals fit within the definition of a trade secret. Further, AMPCO and Huntleigh have not established any of the trade secret factors with respect to their proposals. We therefore find that AMPCO and Huntleigh have failed to demonstrate the applicability of section 552.110(a) to any portion of their respective

¹The 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).

proposals. Accordingly, we conclude that no portion of the proposals submitted by AMPCO and Huntleigh may be withheld pursuant to section 552.110(a).

AMPCO, Huntleigh, LP, and Standard contend that their information is excepted under section 552.110(b). Upon review, we agree that release of portions Standard's proposal would cause that company substantial competitive harm. Accordingly, we have marked pricing information in Standard's proposal to be withheld under section 552.110(b). Huntleigh has only made conclusory allegations that release of any of its information would result in substantial competitive harm. Further, Huntleigh has not identified any specific information that, when released, would cause it substantial competitive harm. *See* ORD No. 661 (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Thus, we conclude that none of Huntleigh's proposal may be withheld pursuant to section 552.110(b). LP argues that its pricing and scheduling methodology is excepted under section 552.110(b). However, upon review of LP's submitted information, it does not contain any specific pricing details or scheduling methodology. Thus, we conclude that none of LP's proposal may be withheld pursuant to section 552.110(b).

AMPCO, the winning bidder in this instance, argues that its proposal and attached quotation, affirmative action program related to the bid and for individuals with disabilities, intent to perform/contract as a contractor, and evaluation of bid proposal are all excepted under section 552.110(b). However, upon review, AMPCO has only made conclusory allegations that release of this information would result in substantial competitive harm. We also note that the pricing information of a company contracting with a governmental body is generally not excepted under section 552.110. *See* Open Records Decision No. 514 (public has interest in knowing prices charged by government contractors); *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). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Thus, none of AMPCO's information may be withheld pursuant to section 552.110(b).

We note that LP's proposal contains vehicle identification numbers which may be excepted under section 552.130 of the Government Code.² Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle title or registration. Gov't Code § 552.130. The airport must withhold the marked vehicle identification numbers in LP's

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

proposal only if they relate to a motor vehicle title or registration issued by the state of Texas. Otherwise, they are not protected under section 552.130 and must be released.

In summary, the airport must withhold the pricing information we have marked in Standard's proposal under section 552.110(b) of the Government Code. To the extent the marked vehicle identification numbers in LP's proposal relate to a motor vehicle title or registration issued by the state of Texas, the airport must withhold them under section 552.130 of the Government Code. Otherwise, the marked vehicle identification numbers must be released. 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 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). If the governmental body does not file suit over 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 317744

Enc. Submitted documents

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