

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2008

Ms. Neera Chatterjee
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2008-15430

Dear Ms. Chatterjee:

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# 327422.

The University of Texas at Austin (the "university") received a request for information submitted in response to a specified Request for Proposals. You claim that portions of the submitted information are excepted from disclosure under section 552.147 of the Government Code. You also state that release of the submitted information could implicate the proprietary interests of the following third parties who submitted proposals to the university: Chappell Graduation Images ("Chappell"), Classic Photography ("Classic"), Success Photography ("Success"), and Flash Photography ("Flash"). Accordingly, you state, and provide documentation showing, that you notified these third parties of the university's receipt of the request for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestor. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

First, 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, only Flash has submitted to this office reasons explaining why its information should not be released. We thus have no basis for concluding that any portion of Chappell's, Classic's, or Success' proposals constitutes proprietary information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the university

may not withhold these companies' proposals on the basis of any proprietary interest they may have in them.

Flash argues that its entire proposal is excepted from disclosure under section 552.110(a) of the Government Code, which protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See* 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

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).

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).

Flash generally contends that each section of its proposal contains trade secrets excepted under section 552.110(a). Although Flash discusses trade secret factors with regard to its proposal as a whole, it provides no arguments explaining how any specific information meets the definition of a trade secret. Flash correctly states that this office held in 2004 that information within its "Products and Services Guide" constituted a trade secret. However, Flash does not inform this office that this is the same guide ruled upon in 2004, nor does it identify those portions that were found to constitute trade secrets. Furthermore, Flash makes no specific arguments regarding the current Products and Services Guide. Accordingly, upon review of Flash's arguments and the submitted information, we find that Flash has failed to demonstrate how any particular portion of its proposal, including its Products and Services Guide, meets the definition of a trade secret. Thus, no information may be withheld under section 552.110(a).

The university states that the submitted proposals contain information that is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. We agree that the university may withhold the social security numbers you have marked under section 552.147.²

In summary, the university may withhold the information it has marked under section 552.147. 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.

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 327422

Enc. Submitted documents

c: Ms. Christine Lutz
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(w/o enclosures)

Dr. Gerald Swanson
Chappell Graduation Images
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Mr. Ray Billingsley
Classic Photography
930 East North 1st Street
Seneca, California 29678
(w/o enclosures)

Mr. Daniel Simmonds
Success Photography
6245 Lake Charm Circle
Oveido, Florida 32765
(w/o enclosures)

Mr. C. Page Strong
Flash Photography, Inc.
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Ms. Katie Anderson
Strasburger & Price, L.L.P.
901 Main Street, Suite 4400
Dallas, Texas 75202-3794
(w/o enclosures)

CAUSE NO. D-1-GN-09-004204

FLASH PHOTOGRAPHY, INC.,
Plaintiff,

v.

ATTORNEY GENERAL OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ 200th JUDICIAL DISTRICT
§
§
§ TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas

JL AUG 30 2010

At 8:40 AM M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court the parties moved for an agreed final judgment. Plaintiff Flash Photography, Inc. (Flash) and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Christine Lutz, Commencement Specialists, was sent reasonable notice of this setting and of the parties' agreement that The University of Texas-Austin must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, bracketed in red on the pages of Flash's proposal, as indicated in Exhibit A to this Agreement, is excepted from disclosure by Tex. Gov't Code § 552.110(a).

2. The University of Texas-Austin must withhold from the requestor the information described in Paragraph 1 of this Judgment.

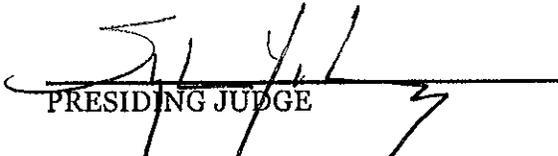
3. Flash no longer contests the disclosure of the remaining information at issue in this lawsuit. The University must release to the requestor Flash's proposal that is responsive to her request for information and that is not held excepted from disclosure by an Attorney General Letter Ruling OR2008-15430 or by Paragraph 1 of this Judgment.

4. All costs of court are taxed against the parties incurring the same;

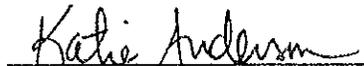
5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 30 day of August, 2010.


PRESIDING JUDGE

APPROVED:



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ATTORNEY FOR PLAINTIFF



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ATTORNEY FOR DEFENDANT

EXHIBIT A

Pages containing information excepted by § 552.110(a)

UT-004204	SFA-001528 (pdf page #'s)	UT Arlington- 003298 (pdf page #'s)	UTEP-000648 (pdf page #'s)
General Proposal (pdf page #'s)			
pp. 6, 13, 14, 15, 17, 18, 26-40	5-12	5-8, 10, 11, 14	2, 8-10, 14, 15, 17, 18, 20, 21, 23, 24-26
Benefits Package (document page #'s)			
Table of Contents		✓	✓
pp. 2-17, 19-22, 24-31, 33		3, 5-7, 10, 12-19	4-5, 7-10, 12, 14- 21
Products and Services Catalogue (pdf page #'s)			
pp. 3-6, 8, 10			