



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2009

Mr. Jefferson B. Davis  
Clardy Davis & Knowles, LLP  
P.O. Box 635426  
Nacogdoches, Texas 75961

OR2009-06138

Dear Mr. Davis:

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# 342367.

The Nacogdoches Central Appraisal District (the "district"), which you represent, received a request for "all digital ownership mapping files." You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. You also state that release of the requested information may implicate the proprietary interests of P2 Energy Solutions, Inc. ("P2"). Accordingly, you notified P2 of the request and of its opportunity to submit comments to this office as to why this information should not be released. *See Gov't Code § 552.305(d); Open Records Decision No. 542* (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have received correspondence from P2. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We note that you have not submitted the requested digital files for our review. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the district in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See Gov't Code §§ 552.301, .302*. We also assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

P2 claims that the requested digital mapping files are excepted from public disclosure under section 552.110 of the Government Code. Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See Gov't Code § 552.110(a)*. A "trade secret":

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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); *see also Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978)*.

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* ORD 232. This office must accept a claim that information subject to the Act is excepted 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) excepts from disclosure “[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). 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 requested information. *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).

P2 explains that its digital mapping files create an advantage over its competitors because its ownership base data layer is used to map oil and gas leases which P2 subsequently licenses to end users. P2 asserts that the requested digital mapping files are unique to its company. P2 further states that release of the requested digital mapping files would cause the company substantial competitive harm because if competitors were provided access to its digital mapping files, competitors could enhance their own database products and in turn, harm P2’s ability to license such data for a fee. Upon review, we determine P2 has established release of the requested information would cause it substantial competitive injury. Therefore, the district must withhold the requested digital mapping files under section 552.110(b) of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

*Paige Savoie*

Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 342367

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: Mr. Ron Moss  
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(w/o enclosures)