



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 29, 2009

Mr. William L. Fly  
University Attorney  
Texas State University  
601 University Drive  
San Marcos, Texas 78666-4615

OR2009-08937

Dear Mr. Fly:

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# 347368.

Texas State University (the "university") received a request for the winning proposal submitted by Alameda Innovations, LLC ("Alameda") regarding a specified project. Although you take no position as to whether the submitted information must be released to the requestor, you state that the submitted documents may contain proprietary information subject to exception under the Act. Accordingly, you provide documentation showing that the university notified Alameda of the request for information and of its rights to submit arguments to this office as to why the submitted information should not be released. *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). Alameda has responded to this notice. We understand Alameda to argue that the submitted information is excepted from disclosure under section 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110 of the Government Code protects: (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to

the person from whom the information was obtained. Gov't Code § 552.110(a), (b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 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. RESTATEMENT OF TORTS § 757 cmt. b (1939).

The following are the six factors that the Restatement gives 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 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 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.

*Id.*; see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). 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.*; see also *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

We understand Alameda to claim the portions of the submitted information regarding the background, statement of work, and budget and schedule are trade secrets for purposes of section 552.110(a) of the Government Code. Alameda informs us that the information at issue is known in full only by core members of Alameda. Alameda states that it takes measures to guard the secrecy of its information by requiring non-disclosure agreements. Alameda further states that it has expended decades developing its strategies, processes, and procedures. Finally, Alameda states that it would take much time and effort to properly acquire or duplicate the strategies and processes used by Alameda. Upon review, we find that the information we have marked constitutes trade secrets and must be withheld under section 552.110(a). Regarding the financial information Alameda seeks to withhold, we note that pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is “simply information as to single or ephemeral events in the conduct of the business,” rather than “a process or device for continuous use in the operation of the business.” See RESTATEMENT OF TORTS § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3. Furthermore, we find that Alameda has not shown that any of the remaining information constitutes trade secrets, and the university may not withhold it under section 552.110(a).

Next, we understand Alameda to claim portions of the submitted information, including pricing information, are excepted from disclosure under section 552.110(b) of the Government Code. Alameda asserts that release of this information would force Alameda to protect its proprietary information under copyright law. However, Alameda has made only conclusory allegations that release of the remaining information would cause substantial

competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (business entity must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (information relating to organization and personnel, market studies, experience, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Further, we note that pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers pricing information in government contracts to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (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). Further, 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, we conclude that none of the remaining information may be withheld under section 552.110(b) of the Government Code.

Finally, we note that the submitted information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person 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 (1990).

In summary, the university must withhold the information we have marked under section 552.110(a) of the Government Code. The university must release the remaining information, but must do so in accordance with copyright law.

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

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

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 347368

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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