



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2009

Ms. Zandra L. Pulis  
Senior Counsel  
Legal Services Division  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2009-10290

Dear Ms. Pulis:

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# 350124.

The City Public Service Board of the City of San Antonio, dba CPS Energy ("CPS") received a request for the bid tabulation for the recently awarded substation grounds maintenance contract. You take no position on the public availability of the requested information. You believe, however, that the requested information may implicate the interests of third parties. You notified the interested parties of this request for information and of the parties' right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We received correspondence from Chemical Weed Control, Inc. ("Chemical Weed"), which objects to disclosure of its information. We have considered Chemical Weed's arguments and reviewed the submitted information.

We first 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

---

<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).

released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Asplundh Tree Expert Company, Cantu Contracting, Fairway Landscape & Nursery, Maldonado Nursery & Landscaping, Paloma Blanca Enterprises, or World Technical Services, Inc. Therefore, because none of those parties has demonstrated that any of the submitted information is proprietary for the purposes of the Act, CPS may not withhold any of their information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Chemical Weed asserts its information is excepted from disclosure under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision." 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. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides 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 . . . [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.

Restatements of Torts § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776.

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;
- (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.

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). 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. However, we cannot conclude section 552.110(a) is applicable unless it has been shown 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* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered Chemical Weed’s arguments, we find that the company has not demonstrated that any of its information constitutes a trade secret under section 552.110(a). Likewise, Chemical Weed has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of Chemical Weed’s information would cause the company substantial competitive harm. We therefore conclude that CPS may not withhold any of Chemical Weed’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 (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).

In summary, none of the interested parties has demonstrated that any of the submitted information is excepted from disclosure. Therefore, because CPS does not claim an exception, the submitted information must be released.

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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 350124

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

c: Allen LeBlanc  
Asplundh Tree Expert Company  
708 Blair Mill Road  
Willow Grove, Pennsylvania 19090  
(w/o enclosures)

Carlos Cantu  
Cantu Contracting  
3396 Rable Road  
San Antonio, Texas 78221  
(w/o enclosures)

Jose Perez  
Fairway Landscape & Nursery  
2848 Castroville Road  
San Antonio, Texas 78237  
(w/o enclosures)

Susie De La Fuente  
Maldonado Nursery & Landscaping  
16348 Nacogdoches Road  
San Antonio, Texas 78247  
(w/o enclosures)

Roy Hudgens  
Paloma Blanca Enterprises  
2810 North Flores Street  
San Antonio, Texas 78212  
(w/o enclosures)

Alan Warrick  
World Technical Services, Inc.  
P.O. Box 200550  
San Antonio, Texas 78220-0550  
(w/o enclosures)

Chemical Weed Control  
Attention: Andrew  
7892 Wickson Ridge Drive  
Bryan, Texas 77808  
(w/o enclosures)

Bradford L. Moore  
Attorney at Law  
508 West Broadway  
Brownfield, Texas 79316  
(w/o enclosures)