



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2009

Mr. Scott A. Kelly  
Deputy General Counsel  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2009-10910

Dear Mr. Kelly:

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# 351310.

The Texas A&M University System (the "system") received a request for Satterfield and Pontikes Construction, Inc.'s ("Satterfield") Historically Underutilized Business subcontracting plans and proposals for two specified projects. Although you take no position with respect to the public availability of the requested information, you state that release of this information may implicate the proprietary interests of Satterfield. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the system has notified Satterfield of the request and of its right to submit arguments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). Satterfield has submitted comments to this office objecting to the release

of its information. We have considered the submitted arguments and reviewed the submitted information.

Satterfield asserts that portions of its information contain trade secrets and that release of some of its information would give an unfair advantage to Satterfield's competitors. Thus, we understand Satterfield to claim that its information is excepted from disclosure under section 552.110 of the Government Code.<sup>1</sup> Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (a) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (b) commercial 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. *Id.* § 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

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<sup>1</sup>Although Satterfield claims in its brief to this office that portions of its information are excepted from disclosure under sections 552.01 and 552.001 of the Government Code, these are not exceptions to disclosure under the Act. Accordingly, we understand Satterfield to claim section 552.110 as the proper exception.

secret factors.<sup>2</sup> 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). We also note that pricing information pertaining to a particular 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.” Restatement of Torts § 757 cmt. b; see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982).

Section 552.110(b) of the Government Code 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 Open Records Decision No. 661 at 5-6 (1999).

Satterfield generally asserts that its financial information is confidential under section 552.110(a). Satterfield also indicates that its customer information contained in its letters of reference are confidential. Upon review, we note Satterfield has made the identities of its customers, which it seeks to withhold, publicly available on its website. Thus, Satterfield has failed to demonstrate that the information published on its website is a trade secret. Further, Satterfield has failed to demonstrate how any of its remaining information at issue meets the definition of a trade secret or shown the necessary factors to establish a trade secret claim. Thus, Satterfield has failed to establish that any portion of its information constitutes a protected trade secret under section 552.110(a) of the Government Code. Accordingly, the system may not withhold any of the information Satterfield seeks to withhold under section 552.110(a) of the Government Code.

Satterfield also generally asserts that portions of its questionnaire, appendix, and HUB Subcontracting Plan are confidential under section 552.110(b). Upon review of Satterfield’s

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<sup>2</sup>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. 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).

arguments, we find it has made only conclusory allegations that release of its information would result in substantial damage to its competitive position. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the system may not withhold any of the information Satterfield seeks to withhold under section 552.110(b) of the Government Code.

We note that the submitted information contains account numbers that are excepted from disclosure under section 552.136 of the Government Code.<sup>3</sup> Section 552.136(b) provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” The system must withhold the account numbers we have marked under section 552.136.

We note that some of the submitted information appears to be protected by copyright. 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). Accordingly, the submitted information must be released to the requestor in accordance with copyright.

In summary, the system must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor 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.

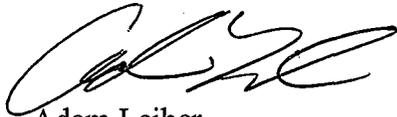
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php).

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 351310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Mr. Jim Brown  
Vice President  
Satterfield & Pontikes Construction, Inc.  
6220 North Beltline, Suite 200  
Irving, Texas 75063  
(w/o enclosures)