



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Ms. Sandy Poel
Public Information Officer
Texas Guaranteed Student Loan Corporation
P.O. Box 83100
Round Rock, Texas 78683-3100

OR2009-13689

Dear Ms. Poel:

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# 356690.

The Texas Guaranteed Student Loan Corporation (the "corporation") received two requests for the bid responses from a specified request for proposals. You claim a portion of the submitted information is excepted from disclosure under sections 552.110 and 552.136 of the Government Code.¹ You take no position with respect to the public availability of the remaining requested information, but believe that the requests may implicate the proprietary interests of Progressive Financial Services, Inc. ("Progressive"), Van Ru Credit Corporation ("Van Ru"), and General Revenue Corporation ("General Revenue"). You state you are releasing some of the requested information, including the proposals related to Progressive and Van Ru.² We have received comments from General Revenue. We have considered the submitted arguments and reviewed the submitted information.

¹ Although you raise section 552.101 of the Government Code, you have not asserted any law under which any of the information at issue is considered to be confidential for purposes of section 552.101. Thus, we assume you no longer claim this exception. See Gov't Code §§ 552.301, .302.

² You state the requestor has agreed to the redaction of confidential and proprietary information.

On behalf of General Revenue, you assert that portions of the submitted information are excepted under section 552.110 of the Government Code. However, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Accordingly, the corporation may not withhold the information you marked on the basis of the proprietary interests of General Revenue. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (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 (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

General Revenue asserts that portions of the submitted information are excepted under section 552.110 of the Government Code. Section 552.110 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 the proprietary interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 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); 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 at 2 (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) 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 Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Having considered General Revenue’s arguments under section 552.110(a), we conclude that General Revenue has established a *prima facie* case that portions of its information, which we have marked, constitute trade secrets. Therefore, the corporation must withhold General Revenue’s work flow and account resolution strategies, which we have marked, pursuant to section 552.110(a) of the Government Code. However, General Revenue has failed to demonstrate that any portion of the remaining information at issue constitutes a trade secret. Thus, no portion of the remaining information may be withheld under section 552.110(a) of the Government Code. We also find that General Revenue failed to provide specific factual evidence demonstrating that release of any of the information at issue would result in

substantial competitive harm to its interests. *See* Open Records Decision Nos. 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 (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), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Accordingly, we determine that no portion of the information at issue is excepted from disclosure under section 552.110(b) of the Government Code.

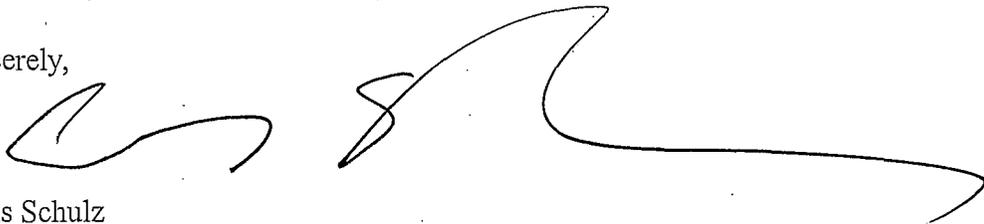
Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the corporation must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the corporation must withhold the information we have marked under section 552.110(a). The corporation must withhold the information you have marked under section 552.136. As you raise no further exceptions against disclosure, the remaining 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, 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to be "Chris Schulz", written over a horizontal line.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 356690.

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Kevin T. Dreyer
Managing Director and Associate General Counsel
General Revenue Corporation
11501 Northlake Drive
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(w/o enclosures)