



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2009

Ms. Nicole B. Webster  
Assistant City Attorney  
Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2009-14693

Dear Ms. Webster:

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# 359301 (Waco # LGL-09-824).

The City of Waco (the "city") received a request for bid tabulations, scoring and proposals for 2009 audit services for the city. You state you will release some information to the requestor. Although you raise no exceptions to disclosure of the remaining requested information, you state release of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, you have notified Weaver & Tidwell, L.L.P. ("Weaver"); Cook & Associates, P.L.L.C. ("Cook"); Pattillo, Brown & Hill, L.L.P. ("Pattillo"); and Jaynes, Reitmeier, Boyd & Therrell, P.C. ("Jaynes") of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *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 to disclosure under certain circumstances). We have received comments on behalf of Weaver. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted comments and reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Cook, Pattillo, and Jaynes have

not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Accordingly, none of the information pertaining to Cook, Pattillo, or Jaynes may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret). As the city makes no arguments regarding this information, it must be released to the requestor.

Weaver claims exceptions to disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision,” and (2) “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.” Gov’t Code § 552.110(a)-(b).

The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, which holds a “trade secret” to be

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, 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.... [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 Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). This office will accept a private person’s claim for exception as valid under section 552.110(a) if the person establishes a prima facie case for the exception and no one submits an argument that rebuts the claim as a matter of law.<sup>1</sup> *See* ORD 552 at 5. However,

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<sup>1</sup> The Restatement of Torts lists the following six factors 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 other involved in [the company’s]

we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information at issue meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) of the Government Code exempts 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). 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. *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).

Weaver contends that portions of its proposal, including its audit approach and methodology, client list, and cost proposal, constitute trade secrets under section 552.110(a). Having considered Weaver’s arguments and reviewed the information at issue, we find that Weaver has established a prima facie case that its methodology and portions of its client list, which we have marked, constitute trade secret information and must be withheld under section 552.110(a). Further, we have received no arguments that rebut these claims as a matter of law. We note, however, that Weaver has published the identity of one of its clients on its website. Thus, Weaver has failed to demonstrate that the information it has published on its website is a trade secret. We also 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 (1982), 306 at 3 (1982). Thus, we conclude that Weaver has failed to demonstrate any portion of its remaining information constitutes a trade secret, and none of Weaver’s remaining information may be withheld under section 552.110(a).

Weaver also raises section 552.110(b). We note that the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards 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

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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* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, none of the pricing information Weaver seeks to withhold may be withheld under section 552.110(b).

We note that a portion of Weaver's remaining information is excepted under section 552.136 of the Government Code.<sup>2</sup> Section 552.136 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the methodology and client information we have marked in the Weaver proposal under section 552.110(a) of the Government Code. The city must withhold the insurance policy numbers we have marked in the Weaver proposal under section 552.136 of the Government Code. 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

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<sup>2</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).

Ref: ID# 359301

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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