



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2009

Ms. Maria Miller  
Public Information Officer  
Dallas County Community College District  
1601 South Lamar, Suite 208  
Dallas, Texas 75215-1816

OR2009-17998

Dear Ms. Miller:

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# 364805.

The Dallas County Community College District (the "district") received two requests from the same requestor for all proposal responses, correspondence with bidders and bid tabulations and scoring sheets associated with RFP number 11452: Emergency Notification System. Although you take no position as to whether the submitted information is excepted under the Act, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you have notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor.<sup>1</sup> See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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

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<sup>1</sup>The interested third parties are Baker & Daniels L.L.P. ("Baker"); Austin Biometrics, L.L.C. ("Austin"); Blackboard Connect, Inc. ("Blackboard"); Great Southwestern Fire and Safety ("Southwestern"); Message Logix, Inc. ("Message"); MIS Sciences Corporation ("MIS"); OmniaAlert ("Omni"); MIR3, Inc. ("MIR3"); Verizon Business ("Verizon"); USAMobility ("USA"), Twenty First Century Crisis Communications, L.L.C. ("Twenty First"); Skytel; Rave Wireless, Inc. ("Skytel"); 3n Global, Inc. ("3n"); and FirstCall Network, Inc. ("FirstCall").

circumstances). We have received comments from Twenty First. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that the request at issue requests all proposal responses, correspondence with bidders and bid tabulations and scoring sheets associated with RFP number 11452: Emergency Notification System. You have only submitted bid proposals to this office for review. To the extent any correspondence with bidders, bid tabulations, and scoring sheets existed on the date the district received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from Baker, Austin, Blackboard, Southwestern, Message, MIS, Omni, MIR3, Verizon, USA, Skytel, 3n, or FirstCall. We, thus, have no basis for concluding that any portion of the submitted information pertaining to these third parties constitutes proprietary information, and the district may not withhold any portion of their information on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (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 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Twenty First claims that portions its submitted proposal are excepted from 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: "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "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 Supreme Court of Texas 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 [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). 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.<sup>2</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* ORD 232. 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. ORD 552. 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 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 (1939); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3.

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* ORD 661 at 5-6.

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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.

Upon review of the submitted arguments and proposals, we conclude Twenty First has established a *prima facie* case that some of its client information, which we have marked, constitutes trade secret information. Therefore, the district must withhold the information we have marked pursuant to section 552.110(a) of the Government Code. We note, however, that Twenty First has published the identities of some of its clients on its website. Because Twenty First published this information, we cannot conclude that the identities of these published clients qualify as trade secrets. Further, we conclude that Twenty First has failed to demonstrate any portion of the remaining information constitutes a trade secret. Accordingly, the district must only withhold the information we have marked pursuant to section 552.110(a) of the Government Code. We determine that no portion of the remaining information is excepted from disclosure under section 552.110(a) of the Government Code.

We also find that Twenty First has demonstrated that release of portions of its pricing information would result in substantial competitive harm. Accordingly, we have marked the information that must be withheld under section 552.110(b).<sup>3</sup> However, upon review of the remaining arguments, we find that Twenty First has failed to demonstrate that substantial competitive harm would result from the release of any of the remaining information. *See* ORD 661 at 5-6. Accordingly, we determine none of the remaining submitted information may be withheld under section 552.110(b) of the Government Code.

We note that portions of the submitted information appear 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). Thus, in releasing the submitted information, the district must comply with applicable copyright law.

In summary, the district must withhold the client information we have marked under section 552.110(a) of the Government Code. The district must withhold the pricing information we have marked under section 552.110(b) of the Government Code. The remaining information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

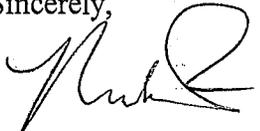
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Nneka Kanu  
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Open Records Division

NK/jb

Ref: ID# 364805

Enc. Submitted documents

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