



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2010

Ms. Evelyn Njuguna  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2010-00097

Dear Ms. Njuguna:

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# 364566.

The City of Houston (the "city") received two requests for proposals sent in response to RFP S17-T23907, regarding a parking management system. Although you do not submit any arguments for why the submitted information should not be released, you state release of the submitted information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, you notified T2 Systems Incorporated ("T2"), ACS State & Local Solutions Incorporated ("ACS"), Cardinal Tracking Incorporated ("Cardinal"), and Eximsoft International ("Eximsoft") of the request and of the companies' right to submit arguments to this office as to why their information should not be released. 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 considered the submitted arguments and reviewed the submitted information.

Although you submitted the ACS proposal in its entirety, you only submitted portions of the remaining responsive proposals for our review. However, the requestors seek these proposals in their entirety. Therefore, we assume the remaining portions of the non-ACS

proposals have been released. If the city has not released the portions of the responsive proposals that have not been submitted, it must do so at this time. See Gov't Code §§ 552.301(a), .302.

ACS asserts the marked portions of its proposal are excepted under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure 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." See Gov't Code § 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 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 a single or ephemeral event 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 763, 776 (Tex. 1958). This office will accept a private person's claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. See Open Records Decision No. 552 at 5 (1990). 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.<sup>1</sup> Open Records Decision No. 402 (1983).

Section 552.110(b) 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 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

ACS states some of the information it marked reveals ACS's methodologies and processes that disclose how ACS implements its services to cities. ACS states this information reflects specific details about ACS innovations in the parking management field which competitors could be used to compete with ACS. The proposal also includes certain "assumptions and exceptions," which ACS explains enhance its bid by providing details about services ACS is able to provide over and above the requested proposal requirements. ACS represents disclosure of these assumptions and exceptions would permit its opposing bidders to provide the same services, negating the competitive benefit to ACS. ACS also indicates the pricing information in the submitted proposal could be used by ACS competitors to undercut its bids in future RFPs. ACS states the above information was developed over many years and at great expense, and is disclosed to ACS employees only on a need-to-know basis.

After reviewing the information at issue and the submitted arguments, we marked some information reflecting the details of ACS's proprietary processes and methodologies. We find ACS has made a *prima facie* case that this information is protected as trade secret information. Accordingly, the city must withhold the marked information under section 552.110(a). However, the remaining information ACS seeks to withhold pertains to ACS personnel and staffing details, information pertaining to ACS's qualifications and its performance under past contracts, and information specific to this bid. Section 552.110 is generally not applicable to this type of information, and ACS has not otherwise shown how this remaining information meets the definition of a trade secret. *See* Open Records Decision

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

No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, and qualifications and experience).

ACS also claims the remaining information is subject to section 552.110(b). However, ACS has not shown how the release of its personnel and staffing details, details about its past contracts and performance, or information specific to this bid will likely result in competitive injury to the company. Thus, ACS has not made the specific factual or evidentiary showing required by section 552.110(b) that substantial competitive injury would result from the release of any of the remaining information. *See generally* Open Records Decision Nos. 661 at 5-6 (1999), 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 is too speculative). Accordingly, none of the remaining information may be withheld under section 552.110(b).

ACS also raises section 552.102 of the Government Code for the personnel information in the submitted proposal. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). This office has found that section 552.102 only applies to information in a personnel file of an employee of a governmental body. The information ACS seeks to withhold is not contained in the personnel file of a governmental body employee. Therefore, we determine that section 552.102 does not apply to ACS's proposal, and none of the information may be withheld on that basis.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from T2, Cardinal, or Eximsoft explaining why any portion of their proposals should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in their proposals. *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). Consequently, the city may not withhold the submitted proposals on the basis of any proprietary interest T2, Cardinal, or Eximsoft may have in the information.

In summary, the city must withhold the information we marked under section 552.110 in ACS's proposal. 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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 364566

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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