



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2010

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2010-00878

Dear Ms. Fourt:

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# 367907.

The Tarrant County Purchasing Department (the "department") received a request for "any current contracts between Tarrant County and any towing companies providing towing service for Tarrant County owned vehicles or equipment." 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 circumstances). We have received

---

<sup>1</sup>The interested third parties are Cornish Wrecker Service ("Cornish"), ABC Wrecker Service ("ABC"), and Texas Towing Wrecker Service, Inc. ("Texas Towing").

comments from Texas Towing. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 Cornish or ABC. Thus, we have no basis for concluding that any portion of the submitted information constitutes the proprietary information of Cornish or ABC. *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. Accordingly, the department may not withhold any of the submitted information based on the proprietary interests of Cornish or ABC.

Texas Towing asserts portions of its information are excepted from disclosure under section 552.110 of the Government Code.<sup>2</sup> Section 552.110 of the Government Code 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 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,

---

<sup>2</sup>Although Texas Towing also raises section 552.104 of the Government Code, we understand it to only raise section 552.110 of the Government Code based on the substance of its argument. In addition, we note section 552.104 only protects the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government).

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 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 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>3</sup> *See* Open Records Decision No. 552 at 5 (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. *See* 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 No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Texas Towing contends that its customer list and pricing information constitute trade secrets under section 552.110(a). Having considered Texas Towing's arguments and reviewed the information at issue, we find that Texas Towing has established a *prima facie* case its customer information, which we have marked, constitutes trade secret information and must be withheld under section 552.110(a). We also note that pricing information pertaining to

---

<sup>3</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] 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).

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 Texas Towing has failed to demonstrate any portion of its remaining information constitutes a trade secret, and none of the remaining information at issue may be withheld under section 552.110(a).

Texas Towing also seeks to withhold portions of its remaining information under section 552.110(b). Upon review, we find Texas Towing has only provided conclusory arguments that release of its remaining information would result in substantial competitive harm to the company. 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), 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), 319 at 3 (1982). Furthermore, we note that the pricing information of a winning bidder, as Texas Towing is in this case, 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 reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, the department may not withhold any of Texas Towing's remaining information pursuant to section 552.110(b) of the Government Code.

We note that section 552.130 of the Government Code is applicable to some of the remaining information.<sup>4</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We also note that some of the remaining information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136(b) provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or

---

<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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”). We have marked insurance policy numbers that must be withheld under section 552.136 of the Government Code.

In summary, the department must withhold (1) the information we have marked under section 552.110 of the Government Code, (2) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, and (3) insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.<sup>5</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

---

<sup>5</sup>We note this office recently issued Open Record Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers and Texas license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 367907

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Curt Clotheir  
Cornish Wrecker  
2557 South Riverside Drive  
Fort Worth, Texas 76104  
(w/o enclosures)

Mr. Kelly Hubbard  
ABC Wrecker Service  
10289 North Freeway  
Fort Worth, Texas 76177  
(w/o enclosures)

Mr. Sam Knight  
Texas Towing Wrecker Service, Inc.  
205 Commercial Street  
Fort Worth, Texas 76107  
(w/o enclosures)