



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2010

Ms. Caroline M. Cho
Assistant County Attorney
Williamson County
Williamson County Courthouse
405 Martin Luther King, #7
Georgetown, Texas 78626

OR2010-02599

Dear Ms. Cho:

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# 370762.

The Williamson County Purchasing Department (the "county") received a request for five categories of information pertaining to request for proposal ("RFP") number 10WCAP123. You state that you do not have information responsive to two of the requested categories of information.¹ You state that a portion of the submitted information is excepted from disclosure pursuant to section 552.136 of the Government Code. Additionally, the county believes the information may involve the proprietary interests of Alliance Work Partners ("Alliance") and Professional Assistance of Central Texas. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the county has notified the interested third parties of the request and of their right to submit arguments to this office explaining why this information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received comments from Alliance. 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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 Professional Assistance of Central Texas. Thus, we have no basis for concluding that any portion of the submitted information constitutes the proprietary information of Professional Assistance of Central Texas. *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 county may not withhold any of the submitted information based on the proprietary interests of Professional Assistance of Central Texas.

You seek to withhold insurance policy numbers in the submitted information under section 552.136 of the Government Code, which provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We agree the insurance policy numbers you have marked constitute access device numbers for purposes of section 552.136. Thus, the county must withhold the insurance policy numbers you have marked in the submitted information under section 552.136 of the Government Code.²

Alliance asserts portions of its information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: "[a] trade

²This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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, 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 party’s claim for exception as valid under section 552.110(a) if the party establishes a prima facie case for the exception and no one submits an argument that rebuts the claim as a matter of law.³ *See Open Records Decision*

³The 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).*

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

Alliance claims that its client list and service delivery plan are trade secrets excepted from disclosure under section 552.110(a).⁴ Upon review of Alliance’s arguments and the information at issue, we find that Alliance has established that its client list qualifies as trade secret information under section 552.110(a). Further, we find that portions of the service delivery plan constitute trade secret information for purposes of section 552.110(a). Accordingly, the county must withhold the trade secret information we have marked in the submitted information under section 552.110(a) of the Government Code. However, Alliance has failed to demonstrate that any portion of its remaining information constitutes a trade secret. Thus, the remaining information may not be withheld under section 552.110(a) of the Government Code.

Alliance also asserts that the remaining information in its service delivery plan is excepted from disclosure under section 552.110(b). However, we find that Alliance only makes a generalized allegation that the release of the service delivery plan would result in substantial damage to the competitive position of the company. ORD 661 at 5-6 (section 552.110(b) requires specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of information). Thus, we find that Alliance has not demonstrated that substantial competitive injury would likely result from the release of the remaining portions of the service delivery plan. Accordingly, the county may not withhold any of the remaining information under section 552.110(b).

Alliance also asserts that portions of its information are 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

⁴We note that Alliance also argues against release of its list of affiliate contractors. However, this information has not been submitted by the county for our review. This decision addresses only the information submitted by the county as responsive to the instant request. *See* Gov’t Code § 552.301(e)(1)(D).

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).

In summary, the county must withhold the information you have marked under section 552.136 of the Government Code. The county must withhold the information we have marked under section 552.110(a) of the Government Code. The remaining submitted information must be released to the requestor 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.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 370762

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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903 Forest Street
Georgetown, Texas 78626
(w/o enclosures)