



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2010

Ms. Ann Greenberg
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 2156
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OR2010-02659

Dear Ms. Greenberg:

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# 371352.

The Education Service Center for Region 15 (the "center"), which you represent, received two requests for information pertaining to a specified request for proposals. You state that the center has released some of the requested information. Although you take no position with respect to the public availability of the submitted information, you state that the submitted documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you provide documentation showing that the center notified Risk Solutions International, LLC ("RSI"); Technical Response Planning Corporation ("TRPC"); and Virtual Emergency Services ("Virtual") of the requests for information and of the companies' right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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). You inform us that RSI has authorized release of all of its documents. You state that the center will release those documents to the requestor that requested that information. TRPC and Virtual have submitted arguments to this office. We have considered the submitted arguments and reviewed the submitted information.

TRPC and Virtual claim that portions of their information are excepted under section 552.110 of the Government Code. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is:

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 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 Huffines*, 314 S.W.2d at 776. 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. RESTATEMENT OF TORTS § 757 cmt. b (1939).

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.

Id.; see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. See ORD 552 at 5. 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).

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 *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); ORD 661.

Virtual claims that portions of its information at issue are excepted from disclosure under section 552.110(a) of the Government Code. Upon review, we conclude that Virtual has failed to establish that any of its information at issue is a trade secret protected by section 552.110(a). See ORD Nos. 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim), 319 at 3 (information relating to organization and personnel, market studies, qualifications and experience, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Thus, the center may not withhold any of the submitted information under section 552.110(a).

TRPC and Virtual claim that portions of the information at issue are excepted from disclosure under section 552.110(b) of the Government Code. Upon review, we conclude TRPC has established that release of its cost information would cause TRPC substantial competitive injury. We further conclude Virtual has established that release of its customers’ contact information would cause Virtual substantial competitive injury. Therefore, the center must withhold the information we have marked under section 552.110(b). However, TRPC and Virtual have made only conclusory allegations that release of their remaining information at issue would cause the companies substantial competitive injury and have provided no specific factual or evidentiary showing to support such allegations. We note that the pricing information of a winning bidder, such as Virtual in this instance, 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 reason that disclosure of prices charged government is a cost of doing business with government). 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 remaining 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).

In summary, the center must withhold the information we have marked under sections 552.110(b) of the Government Code. The center must release the remaining information, but any information that is protected by copyright 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.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 371352

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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