



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2010

Ms. Susan Camp-Lee
Attorney for City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2010-07283

Dear Ms. Camp-Lee:

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# 379881.

The City of Round Rock (the "city"), which you represent, received a request for all proposals submitted in response to request for proposals number 09-030. Although you take no position on release of the requested information, you explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified AMTEC, Bond Logistix, L.L.C. ("Bond"), First Southwest Asset Management ("First Southwest"), Hawkins, Delafield & Wood, L.L.C. ("Hawkins"), PFM Asset Management, L.L.C. ("PFM"), and Pinnacle Arbitrage Compliance, L.L.C. ("Pinnacle") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information. We have considered comments received from AMTEC. We have also considered comments submitted by Arbitrage Compliance Specialists, which made the request. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information

relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from Bond, First Southwest, Hawkins, PFM, or Pinnacle. Thus, these private parties have not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest these companies have in the information.

AMTEC seeks to withhold its client information under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). AMTEC appears to raise section 552.101 in conjunction with section 51.914 of the Education Code, which provides as follows:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under [the Act], or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee;

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is the proprietary information of a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties; or

(3) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility that is jointly financed by the federal government and a local government or state agency, including an institution of higher education, if the facility is designed and built for the purposes of promoting scientific research and development and increasing the economic development and diversification of this state.

Educ. Code § 51.914. AMTEC has not explained how or why any of its information would be confidential under section 51.914. Likewise, AMTEC has not directed our attention to any other law under which any of its information is considered to be confidential for the purposes of section 552.101. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code.

AMTEC seeks to withhold its approach and objectives, restrictions and methodologies, scope of work, scope of services summary, time line, availability, amending calculations, and pricing information 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: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and (2) “[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(a)-(b).

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 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 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.¹ Open Records Decision No. 552 at 5-6 (1990). However, we cannot conclude that section 552.110(a) is applicable unless the party claiming this exception has shown that the information at issue meets the definition of a trade secret and has demonstrated the necessary factors to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) excepts from disclosure “[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. *See* Open Records Decision No. 661 at 5-6 (1999).

AMTEC claims portions of its information are excepted from disclosure under section 552.110. However, after reviewing the information at issue and AMTEC’s arguments, we determine that AMTEC has failed to demonstrate that any portion of the information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. 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 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). Accordingly, no portion of the information at issue may be withheld under section 552.110(a).

AMTEC also seeks to withhold its information under section 552.110(b) of the Government Code. However, we find that AMTEC has made only conclusory allegations that release of the submitted information would cause the company substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. Furthermore, the information pertains to the prices AMTEC charges the city for its services.

¹The 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 (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *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 city may not withhold any of the submitted information under section 552.110(b).

We note the submitted information contains an insurance policy number. Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], 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(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the city must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.² 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, 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,



Chris Schulz
Assistant Attorney General
Open Records Division

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²We note that this 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 without the necessity of requesting an attorney general decision.

Ref: ID# 379881

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

c: Mr. William M. Pascucci
President
AMTEC
124 LaSalle Road
West Hartford, Connecticut 06107
(w/o enclosures)

Mr. Doug Pahnke
Director, Vice President
Arbitrage Compliance Specialists, Inc.
2500 City West Boulevard, Suite 300
Houston, Texas 77042
(w/o enclosures)

Ms. Sandra F. Stallings
Managing Director
Bond Logistix, LLC
2711 North Haskell Avenue, Suite 2600 Southwest, Lockbox # 35
Dallas, Texas 75204
(w/o enclosures)

Ms. Shelley D. Weiske
Senior Vice President
First Southwest Asset Management
325 North St. Paul Street, Suite 800
Dallas, Texas 75201
(w/o enclosures)

Mr. Takashi Iwata
Director, Financial Analysis & Services Group
Hawkins, Delafield & Wood, LLP
One Chase Manhattan Plaza,, 42 Floor
New York, New York 10005
(w/o enclosures)

Ms. Joan M. DiMarco
Managing Director
PFM Asset Management, LLC
Two Logan Square
18th & Arch Street, Suite 1600
Philadelphia, Pennsylvania 19103
(w/o enclosures)

Mr. Terence P. Burke
President
Pinnacle Arbitrage Compliance, LLC
13760 Noel Road, Suite 1040
Dallas, Texas 75240
(w/o enclosures)