



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2010

Mr. James G. Nolan  
Assistant General Counsel  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2010-10433

Dear Mr. Nolan:

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# 386610 (CPA ID # 6316528824).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information relating to a specified request for proposals. You state that some of the requested information either has been or will be released. You also state that social security and insurance policy numbers will be redacted from the submitted information pursuant to section 552.147 of the Government Code and the previous determination issued in Open Records Decision No. 684 (2009).<sup>1</sup> You take no position on the public availability of the rest of the submitted information. You believe, however, that the remaining information at issue may implicate the proprietary interests of North American Lubricants ("NAL"). You inform us that NAL was notified of the instant request for the submitted information and of its right to submit arguments to this office as to why the information should not be released.<sup>2</sup> We

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<sup>1</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

received correspondence from NAL. We have considered NAL's arguments and reviewed the submitted information.

We note that the requestor also asks a question about the termination of a contract. A governmental body need not answer factual questions or create new information in responding to a request for information under the Act. A governmental body must make a good-faith effort, however, to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume that the comptroller will do so and respond appropriately to the requestor's question.

Next, we address NAL's arguments under section 552.110 of the Government Code. This exception to disclosure protects the proprietary interests of third 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, 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). We cannot conclude, however, 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 (1990) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

NAL contends that portions of the submitted information constitute trade secrets of the company under section 552.110(a).<sup>4</sup> Having considered NAL's claims and reviewed the information at issue, we find that NAL has demonstrated that section 552.110(a) is applicable to the information we have marked. We therefore conclude that the comptroller must withhold the marked information under section 552.110 of the Government Code. We find that NAL has not demonstrated that section 552.110(a) is applicable to any of the remaining information. We therefore conclude that the comptroller may not withhold any of the remaining information under section 552.110 of the Government Code.

We note that some of the remaining information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. See Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental

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<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).

<sup>4</sup>As the comptroller will redact the social security number that appears in the submitted information under section 552.147(b) of the Government Code, we need not address NAL's claim for the social security number under section 552.110(b).

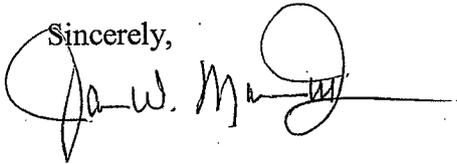
body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, the comptroller must withhold the information we have marked under section 552.110 of the Government Code. The rest of the information at issue must be released, 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](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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/tp

Ref: ID# 386610

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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