



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2010

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

OR2010-10975

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# 387737 (CPA ID# 6336754012).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information pertaining to a specified request for proposals. You state you have released some of the requested information. You state release of the submitted information may implicate the proprietary interests of Accenture L.L.P. ("Accenture"). Thus, pursuant to section 552.305 of the Government Code, you state you notified Accenture of the request and of its right to submit arguments to this office as to why its information should not be released. 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 to disclosure in certain circumstances). We have received comments from Accenture. We have considered the submitted arguments and reviewed the submitted information.

Accenture raises section 552.101 and section 552.102(a) of the Government Code for a portion of its information. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102(a) protects information relating to public officials and employees. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing

statutory predecessor). Section 552.102 only applies to information in a personnel file of an employee of a governmental body. The information Accenture seeks to withhold is not contained in the personnel file of a governmental employee. Thus, we determine that section 552.102 does not apply to any of Accenture's information, and it may not be withheld on that basis.

However, section 552.102(a) utilizes the same test as the test for common-law privacy under section 552.101 of the Government Code, which can protect private individuals. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. We note that names, addresses, telephone numbers, educational history and work background of individuals are not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (names and addresses are not protected by privacy). Upon review, we find Accenture's proposal does not contain information that is highly intimate or embarrassing and of no legitimate public interest. Therefore, the comptroller may not withhold any of Accenture's information under section 552.101 of the Government Code in conjunction with common-law privacy.

Accenture also raises section 552.110 of the Government Code for portions of its proposal. Section 552.110 protects (1) trade secrets and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 (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.¹ RESTATEMENT OF TORTS § 757 cmt. b (1939). 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. *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* 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).

Accenture claims that portions of the submitted information constitute trade secrets and are excepted under section 552.110(a). Having considered Accenture’s arguments, we find that it has established a *prima facie* case that some of its customer information, which we have marked, constitutes trade secrets. Therefore, the comptroller must withhold the information we have marked pursuant to section 552.110(a) of the Government Code. We note that Accenture has published the identities of some of its customers on its website. Thus,

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 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 also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Accenture has failed to demonstrate that the information it has published on its website is a trade secret. Further, Accenture has failed to demonstrate that any of its remaining information meets the definition of a trade secret, nor has Accenture demonstrated the necessary factors to establish a trade secret claim for this information. Thus, none of Accenture's remaining information may be withheld under section 552.110(a) of the Government Code.

Accenture also contends some of its proposal is excepted under section 552.110(b). Upon review of Accenture's arguments and its information, we find Accenture has made only conclusory allegations that the release of its remaining information would result in substantial damage to its competitive position. Thus, Accenture has not demonstrated that substantial competitive injury would result from the release of any of the remaining information. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because 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 (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, none of the remaining information may be withheld under section 552.110(b).

Next, we address Accenture's contention that its remaining information is excepted from disclosure by section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

- (1) a trade secret of the business prospect; or
- (2) 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 § 552.131(a). Section 552.131(a) is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). As previously stated, Accenture has failed to demonstrate any portion of its remaining information meets the definition of a trade secret, and Accenture has provided no specific factual or evidentiary showing release of its remaining information would cause the company substantial competitive injury.

Consequently, we conclude that the comptroller may not withhold any portion of Accenture's remaining information pursuant to section 552.131(a) of the Government Code.

In summary, the comptroller must withhold the information we have marked under section 552.110(a) of the Government Code. 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 387737

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)