



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2010

Mr. Hans P. Graff  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2010-11606

Dear Mr. Graff:

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# 389105.

The Houston Independent School District (the "district") received a request for information pertaining to the district's Food Services Management RFP. You state the submitted information may implicate the proprietary interests of third parties.<sup>1</sup> Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified Aramark and Chartwells School Dining Services ("Chartwells") of the request and of each company's right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); *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 to disclosure under Act in certain circumstances). We have received comments from representatives of Aramark and Chartwells. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

---

<sup>1</sup>We note that the district raises sections 552.101, 552.104, and 552.110 of the Government Code as exceptions to disclosure. However, you have not provided this office with arguments applying those exceptions to the submitted information. *See* Gov't Code §§ 552.301, .302. Furthermore, we note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body.

Aramark and Chartwells raise section 552.110 of the Government Code for portions of the submitted information. 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. *Id.* § 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. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision 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.*; Open Records Decision No. 661 (1999).

Having reviewed Aramark’s and Chartwells’ arguments, we find they have made a *prima facie* case that some of their respective client information constitutes trade secrets. We have marked the client information that the district must withhold from Aramark’s and Chartwells’ proposals under section 552.110(a) of the Government Code. However, Aramark and Chartwells have made the remainder of the customer information they seek to withhold available on their websites. Because Aramark and Chartwells have published this customer information, we conclude they have failed to demonstrate that they consider this information to be a trade secret. See ORD 402. Additionally, we find Aramark and Chartwells have not demonstrated how the remaining information they seek to withhold in their proposals meets the definition of a trade secret. See ORD 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). Consequently, the district may not withhold any of Aramark’s and Chartwells’ remaining information under section 552.110(a) of the Government Code.

Upon review of Chartwells’ arguments and its information, we find Chartwells’ has established that the pricing information we have marked in its proposal constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, the district must withhold the information we have marked in Chartwells’ proposal under section 552.110(b) of the Government Code. We note that Aramark has an existing contractual relationship with the district. Aramark also asserts release some of the remaining information, including pricing information arising out of ongoing negotiations, would cause it substantial competitive injury. We note the pricing information of a winning bidder 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 reasoning that disclosure of prices charged government is a cost of doing business with government). Upon review, we find Aramark has demonstrated that release of its pricing information related to the ongoing negotiations would cause it substantial competitive harm. Accordingly, the district must withhold the information we have marked under section 552.110(b), to the extent such information does not reflect the final price or the pricing of an existing contract. However, to the extent the marked information reflects the pricing of an existing contract, this information may not be withheld under section 552.110(b). Further, Aramark and Chartwells have only provided conclusory arguments that release of any of the remaining information would cause them substantial competitive harm. 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 information are subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 states that “[n]otwithstanding 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. Accordingly, we find that the district must withhold the information we have marked under section 552.136 of the Government Code.<sup>3</sup>

We note some of the remaining information may 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. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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. In summary, the district must withhold the information we have marked under sections 552.110 and 552.136 of the Government Code. The remaining requested information must be released, but only in accordance with copyright law.

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note 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 and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 389105

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: Mr. Laurence B. Jones  
Compass Group  
3 International Drive, 2<sup>nd</sup> Floor  
Rye Brook, New York 10573  
(w/o enclosures)

Ms. Sarah E. Bouchard  
Morgan Lewis 7 Bockius  
1701 Market Street  
Philadelphia, Pennsylvania 19103-2921  
(w/o enclosures)