



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2010

Mr. Tom Tracy
Assistant General Counsel
Office of General Counsel
University of Houston System
311 East Cullen Building
Houston, Texas 77204-2028

OR2010-11949

Dear Mr Tracy:

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#389520.

The University of Houston (the "university") received two requests for information regarding the university's Invitation to Bid Event Staffing 2010, including the complete bid tabulation and a copy of the awarded company's complete bid, including all supporting documentation. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of interested third parties. Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released.¹ See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 received correspondence from 5 Star Event Services ("5 Star"). We have reviewed the submitted information.

¹The interested third parties you have notified are as follows: 5 Star Event Services, Consultants Group International, Contemporary Services Corporation, Go Professional Env. Management, Gonzales Labor Systems, Inc., HS Direct, LLC, and The Moore Group.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from 5 Star. Therefore, we have no basis to conclude the remaining six parties have protected proprietary interests in their submitted information. *See id.* § 552.110; 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. Accordingly, the university may not withhold information pertaining to the remaining six parties on the basis of any proprietary interest. We will, however, consider arguments raised by 5 Star under section 552.110 of the Government Code.

We note that 5 Star seeks to withhold from public disclosure its company owner's social security number and client references. However, the documents submitted as responsive by the university do not contain this information. This ruling does not address information that was not submitted by the university and is limited to the information submitted as responsive by the university. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Therefore, we do not address 5 Star's arguments against disclosure of this information.

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 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 that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.² 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 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

We understand 5 Star to assert that portions of its information constitute trade secrets that are excepted from disclosure under section 552.110(a). Upon review, we find that 5 Star has failed to demonstrate how any of its information meets the definition of a trade secret or shown the necessary factors to establish a trade secret claim. *See* ORD 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 2 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). We note that pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the 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; ORD Nos. 319 at 3, 306 at 3 (1982). Therefore, 5 Star has failed to establish that any portion of its information constitutes a protected trade secret under section 552.110(a) of the Government Code, and none of its information may be withheld on that basis.

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

We also understand 5 Star to claim that portions of its submitted information are excepted from disclosure under section 552.110(b). Upon review, we find that 5 Star has failed to provide specific factual evidence demonstrating that release of any of the information at issue would result in substantial competitive harm to its interests. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). 5 Star also seeks to withhold its pricing information. However, we note 5 Star was the winning bidder in this instance. 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, none of 5 Star's information may be withheld under section 552.110(b) of the Government Code. As no further exceptions have been raised, the 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#389520

Enc. Submitted documents

c: Mr. Samuel Salas
Go Professional Env. Management
2870 Gessner A-1
Houston, Texas 77080
(w/o enclosures)

Ms. Lisa W. Garner
Consultants Group International, Inc.
2425 West Loop South, Suite 200
Houston, Texas 77027
(w/o enclosures)

Ms. Cecilia Gonzales
Gonzales Labor Systems, Inc.
8304 Long Point Road
Houston, Texas 77055
(w/o enclosures)

Mr. Mark Glaser
Contemporary Services Corporation
8181 North Stadium Drive, Suite 200
Houston, Texas 77054
(w/o enclosures)

Mr. Darryl L. King
HS Direct, LLC
1001 Avenue de las Americas
Houston, Texas 77252-2004
(w/o enclosures)

Mr. Herbert Moore
The Moore Group
7647 Harrisburg Boulevard
Houston, Texas 77012
(w/o enclosures)

Mr. Edgar Bustamante
5 Star Event Services
1801 Milby Street
Houston, Texas 77003
(w/o enclosures)