



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2010

Mr. Reg Hargrove
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2010-15631

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 396675 (PIR No. 10-28549).

The Office of the Attorney General (the "OAG") received a request for the following information pertaining to RFP# 270808 for Data Management Services: 1) Policy Studies Inc.'s ("PSI") technical proposal; 2) PSI's amendments and change orders for contract number 302-6-0007; 3) performance reports from January 1 to June 30, 2010; and 4) production reports for fiscal year 2009 and fiscal year 2010 to date. The OAG takes no position as to disclosure of the information. Because release of the information may implicate PSI's proprietary interests, the OAG notified PSI 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) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released). We have considered PSI's arguments and reviewed the submitted information.

PSI seeks to withhold Sections 2.2, 2.3, and 2.4 under section 552.110 of the Government Code.¹ Section 552.110 protects the property interests of private persons by excepting from

¹Although PSI seeks to withhold Appendixes C and D, the OAG did not submit this information in its request for a decision. Thus, this decision does not address such information.

disclosure two types of information: (a) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (b) 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. The interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

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.), *cert. denied*, 358 U.S. 898 (1958); *see also Open Records Decision No. 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). 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).² This office must accept a private person's claim for exception as valid under the trade secret branch if that person establishes a *prima facie* case for exception and no

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

- (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).

argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990).

After reviewing PSI's brief, we agree it demonstrated portions of its information are commercial or financial information the release of which would cause it substantial competitive harm. We have marked the information the OAG must withhold under section 552.110(b). However, we find PSI failed to demonstrate the rest of the information it seeks to withhold is a trade secret or commercial or financial information the release of which would likely result in substantial competitive injury. Accordingly, the OAG may not withhold the remainder of PSI's information under section 552.110.

Next, we consider PSI's claim under section 552.139 of the Government Code for the remaining information. Section 552.139 of the Government Code provides in part:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, . . . , or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

...

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use.

Gov't Code § 552.139(a), (b)(2). After review of the remaining information, we conclude it is not information excepted under section 552.139. Thus, the OAG may not withhold the remainder under section 552.139.

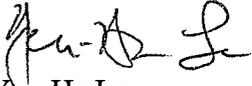
In summary, the OAG must withhold the proprietary information we marked under section 552.110(b) of the Government Code. The OAG must release the remainder.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 396675

Enc: Marked documents

c: Requestor
(w/o enclosures)

Mr. Jon C. Bourne
General Counsel and Secretary
Policy Studies Inc.
1515 Wynkoop Street, Suite 400
Denver, Colorado 80202
(w/o enclosures)