



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2010

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2010-15666

Dear Ms. Hojem:

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# 396909 (MTA# 2010-0619).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for all submitted proposals and all tabulations used to determine the final award related to RFP RP0900052. Although METRO takes no position as to the disclosure of the requested information, you state that it may contain confidential and proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, METRO notified the companies whose information is at issue of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See 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 in the Act in certain circumstances). Two of these companies, WJP & Associates and Confidential Research, Inc., notified METRO that their information could be released. Accordingly, you state METRO made these proposals and the information related to the tabulations available to the

¹The interested third parties are as follows: A. Joe Winter Investigations Co., Inc. ("JWI"); ProSidian Consulting, LLC ("ProSidian"); WJP & Associates; Laborchex, Inc.; Quick Search; Screening One; Accusource; Carco Group, Inc.; Inquiries, Inc.; PointHR Inc.; Mind Your Business, Inc.; Corporate Security Services Inc.; American Investigations & Security International; HireRight, Inc. ("HireRight"); Axiom Information Security Services ("Axiom"); Merchants Information Solutions, Inc.; Stadler & Co., Inc.; Stewart Investigative Services, Inc.; Confidential Research, Inc.; and The Investigative Firm, Inc.

requestor. JWI, ProSidian, Screening One, HireRight, and Acxiom responded to the notice and argue that some or all of their information is excepted from disclosure. We have considered the submitted arguments and reviewed the submitted information.

We note 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from JWI, ProSidian, Screening One, HireRight, and Acxiom. The remaining third parties have not submitted to this office any comments explaining why their information should not be released. Thus, these companies have not demonstrated that any of their information is proprietary for purposes of the Act. *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, we conclude METRO may not withhold any portion of the submitted information on the basis of any proprietary interest these remaining third parties may have in the information.

ProSidian raises section 552.101 of the Government Code in conjunction with the Uniform Trade Secrets Act. Section 552.101 excepts from disclosure "information considered confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The Uniform Trade Secrets Act was drafted by the National Conference of Commissioners on Uniform State Laws as a model law to be used by state legislatures in enacting similar statutes. We note that the Texas legislature has not enacted a version of the Uniform Trade Secrets Act. Therefore, METRO may not withhold any portion of ProSidian's information under section 552.101 on that basis.

JWI, ProSidian, Screening One, HireRight, and Acxiom argue that either all or portions of their proposals are excepted under section 552.110. Section 552.110 of the Government Code 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 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, 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

. . . . 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 776 (Tex. 1958). 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.² 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. Open Records Decision No. 402 (1983). We note that pricing information pertaining to a particular 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." RESTATEMENT OF TORTS § 757 cmt. b (1939).

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.*; *see also* ORD 661 at 5.

Upon review, we conclude HireRight has established a *prima facie* case that its customer lists, which we have marked, constitute trade secret information pursuant to section 552.110(a). Additionally, we find that JWI, ProSidian, Screening One, HireRight,

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 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).

and Acxiom have made the specific factual or evidentiary showing that portions of their proposals, including their pricing information, which we have marked, constitute commercial or financial information the release of which would cause JWI, ProSidian, Screening One, HireRight, and Acxiom substantial competitive injury under section 552.110(b). Accordingly, METRO must withhold the information we have marked under section 552.110 of the Government Code.

However, upon review, we find that none of the parties have established a *prima facie* case that any portion of the remaining information constitutes a trade secret protected by section 552.110(a). We also conclude that none of the parties have made the specific factual or evidentiary showing required by section 552.110(b) that the release of any of the remaining information would cause substantial competitive harm. *See* Open Records Decision Nos: 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), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertions that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 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). Therefore, METRO may not withhold any of the remaining information under section 552.110.

We note a portion of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle title or registration issued by a Texas agency.³ Gov't Code § 552.130(a)(2). Thus, METRO must withhold the partial license plate number contained in one of the submitted photographs, which we have marked, under section 552.130.

We note portions of the remaining information are excepted from disclosure under section 552.136 of the Government Code, which provides 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." *Id.* § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, METRO must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

Finally, we note some of the materials at issue are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of

³The 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).

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, METRO must withhold the information we have marked in HireRight's proposal under section 552.110(a). METRO must withhold the information we have marked in JWI's, ProSidian's, Screening One's, HireRight's, and Acxiom's proposals under section 552.110(b) of the Government Code. METRO must withhold the partial license plate number we marked under section 552.130 of the Government Code and the insurance policy numbers we have marked under section 552.136 of the Government Code.⁴ The remaining information must be released, but any copyrighted information 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, 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

⁴We 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 the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 396909

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Adam W. Dietrich
Baker & Beck, PLLC
202 Avenue A
Conroe, Texas 77301

Mr. Adrian Woolcock
Prosidian Consulting, LLC
550 Open Book Lane
Charlotte, North Carolina 28270-3745
(w/o enclosures)

Mr. Geoff Vaughan
Laborhex, Inc.
2506 Lakeland Drive #200
Jackson, Mississippi 39232
(w/o enclosures)

Ms. Carolyn Walter
Quick Search
4155 Buena Vista
Dallas, Texas 7504
(w/o enclosures)

Mr. Sal Martinicio
Carco Group, Inc.
5000 Corporate Court #203
Holtsville, New York 11742
(w/o enclosures)

Mr. Michael Byrd
Screening One
1860 North Avenida Republica de Cuba
Tampa, Florida 33605
(w/o enclosures)

Mr. Tommy E. Stadler
Stadler & Co., Inc.
3724 F.M. 1960 West #242
Houston, Texas 77068
(w/o enclosures)

Mr. Peter Stocks
Accusource
1240 East Ontario Avenue #102-140
Corona, California 92881
(w/o enclosures)

Mr. Arnold Stewart
Stewart Investigative Services, Inc.
Dba Stewart & Associates
8700 Commerce Park Drive # 122
Houston, Texas 77036
(w/o enclosures)

Mr. Eric Rhodes
The Investigative Firm, Inc.
1314 Texas Avenue, Suite 810
Houston, Texas 77002
(w/o enclosures)

Ms. Jennifer Clark
Inquiries, Inc.
129 North West Street
Easton, Maryland 21601-2709
(w/o enclosures)

Mr. Marc Klamecki
Pointhr Inc.
3535 Firewheel Drive #C2
Flower Mound, Texas 75028
(w/o enclosures)

Mr. John Posey
Corporate Security Services, Inc.
2210 West main Street #107-214
Battleground, Washington 98604
(w/o enclosures)

Mr. Eric Hughes
Hireright, Inc.
5151 California Avenue
Irvine, California 92617
(w/o enclosures)

Mr. Mike Cool
Acxiom Information Security Services
611 Oak Tree Boulevard
Independence, Ohio 44131
(w/o enclosures)

Ms. Karen M. Caruso
Mind Your Business, Inc.
305 East 8th Avenue
Hendersonville, North Carolina 28792
(w/o enclosures)

Mr. Daniel B. Flores
American Investigations & Security Int'l
955 West Highway 281
Donna, Texas 78537
(w/o enclosures)

Ms. Anne Heller
Merchants Information Solutions, Inc.
301 East Virginia Avenue, 2nd Floor
Phoenix, Arizona 85004
(w/o enclosures)