



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2010

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-17066

Dear Ms. Chatterjee:

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# 399818 (UTA ID# 132785).

The University of Texas at Arlington (the "university") received a request for all information submitted by 5G Studio_Collaborative, LLC ("5G"); Halff Associates, Inc. ("Halff"); Randall Scott Architects, Inc. ("Randall Scott"); and WHR Architects, Inc. ("WHR") in response to Request for Qualifications No. FM2010-012 regarding architect/engineer services. Although you state the university takes no position with respect to the public availability of the submitted qualification information, you state its release may implicate the proprietary interests of 5G, Halff, Randall Scott, and WHR. Accordingly, you state, and provide documentation showing, the university notified these companies of the request and of each company's right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from 5G and WHR. We have also received comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of requested information). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor has specifically excluded from his request all financial information of each company whose information is at issue. Thus, any such information is

not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.¹

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 not received comments from Halff or Randall Scott explaining why their submitted information should not be released. Therefore, we have no basis to conclude Halff and Randall Scott have protected proprietary interests in their 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. Consequently, the university may not withhold any of Halff's or Randall Scott's submitted information on the basis of any proprietary interests they may have in their information.

5G asserts all of its submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. Section 552.104, however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions in general). As the university does not seek to withhold any information pursuant to this exception, we find section 552.104 is not applicable to 5G's information. *See* ORD 592 (governmental body may waive section 552.104).

5G claims some of its submitted information is excepted from disclosure under section 552.110(a) of the Government Code, which protects trade secrets obtained from a person that are 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

¹As our ruling for this information is dispositive, we need not address 5G's arguments under section 552.110(b) of the Government Code or WHR's arguments.

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 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* ORD 552 at 5. 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).

5G claims specified portions of its information constitute trade secrets under section 552.110(a). Upon review, however, we find 5G has not demonstrated how this information, which includes general company information, personnel and company qualifications, and examples of past company projects, meets the definition of a trade secret. *See* Open Records Decision Nos. 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 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the university may not withhold 5G's information at issue under section 552.110(a) of the Government Code. As 5G has not claimed any other exceptions to disclosure, its information must be released.

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 (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

In summary, the submitted responsive information must be released to the requestor.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 399818

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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