



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2011

Mr. Vince Ryan  
County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2011-00624

Dear Mr. Ryan:

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# 405679 (C.A. File: 10GEN2471).

The Harris County Purchasing Agent's Office (the "county") received three requests from different requestors for all bid proposals submitted in response to Request for Proposals 10/0047 and the corresponding scoring information. You state you will make redactions pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> Although you raise no further exceptions to disclosure of the submitted information, you state release of this information may implicate the proprietary interests of certain third parties.<sup>2</sup> You state LAZ Parking does not object to the release of its information and you will release this information to the requestors with redactions pursuant to Open Records Decision No. 684. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code the county notified the interested third parties of the request and of their right to submit arguments to this office explaining why their information should not be released. *See Gov't*

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<sup>1</sup>We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>The interested third parties are as follows: Ampco System Parking ("Ampco"); Central Parking System's of Texas, Inc. ("Central"); DAJA International LLC ("DAJA"); Republic Parking ("Republic"); and Robbins Parking Texas LP d/b/a Platinum Parking ("Platinum").

Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received arguments from Ampco, Central, DAJA, and Republic. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Platinum. Thus, because this third party has not demonstrated that any of its requested information is proprietary for the purposes of the Act, the county may not withhold any of its information on that basis. *See id.* § 552.110(a)-(b); 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.

We understand Ampco, Central, DAJA, and Republic to raise section 552.110 of the Government Code for portions of their 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. *See* Gov't Code § 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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. 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.<sup>3</sup> 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. *See* 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.*; *see also* ORD 661 at 5-6 (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).

Upon review of the submitted arguments, we conclude Ampco, Central, DAJA, and Republic have failed to demonstrate that any of their information meets the definition of a trade secret,

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<sup>3</sup>The 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).

nor have these companies demonstrated the necessary factors to establish a trade secret claim for their information. Therefore, the county may not withhold any of the submitted information under section 552.110(a) of the Government Code.

Upon review, we find Ampco and Central have established that the release of some of their information would cause each company substantial competitive harm. Thus, the county must withhold this information, which we have marked, in their proposals under section 552.110(b) of the Government Code. However, we find Ampco, Central, DAJA, and Republic have made only conclusory allegations that release of any of the remaining information would result in substantial competitive injury. *See generally* Open Records Decision Nos. 661, 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is 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). Accordingly, the county may not withhold any of the remaining information under section 552.110(b) of the Government Code.

Section 552.136 of the Government Code 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; *see id.* § 552.136(a) (defining “access device”). We note, however, that the first requestor has a right of access to his company’s own insurance policy numbers. *See id.* § 552.023 (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4. Accordingly, the county must withhold these insurance policy numbers from the remaining requestors under section 552.136 of the Government Code. Further, the county must withhold the remaining insurance policy and bank account numbers we have marked under section 552.136.<sup>4</sup>

In summary, the county must withhold the information we have marked under section 552.110 of the Government Code. The county must withhold the insurance policy numbers we have marked that belong to the first requestor from the remaining requestors under section 552.136 of the Government Code. The county must withhold the remaining insurance policy and bank account numbers under section 552.136 of the Government Code. The remaining information must be released.

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<sup>4</sup>As previously noted, Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including insurance policy numbers and bank account 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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID # 405679

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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