



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2011

Mr. Juan J. Cruz
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OR2011-02646

Dear Mr. Cruz:

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# 409663.

The United Independent School District (the "district"), which you represent, received a request for five items of information pertaining to solicitation 2010-071. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of ARCBridge Consulting & Training, Inc. ("ARCBridge"); Knight & Partners; Powell & Leon, L.L.P.; and Rolando L. Rios & Associates, P.L.L.C ("Rios"). Accordingly, you notified these entities of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); 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 ARCBridge and Rios and reviewed the submitted information.

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 ARCBridge and Rios explaining why their submitted information should not be released. Therefore, the other third parties have not provided us with any basis to conclude they have protected proprietary interests in the 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. Thus, none of the submitted information may be withheld on the basis of the other third parties' proprietary interests.

Rios asserts its proposal is excepted from disclosure under section 552.104 of the Government Code, which excepts "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 district does not seek to withhold any information pursuant to this exception, we find section 552.104 is not applicable to Rios's proposal. Accordingly, no portion of Rios's proposal may be withheld under section 552.104.

Rios asserts its entire proposal, including its client list, are excepted from disclosure under section 552.110 of the Government Code. We also understand ARCBridge to assert portions of its proposal are excepted under section 552.110. Section 552.110 protects the proprietary interests of private parties by excepting from 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. 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. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552 at 2. 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.¹ 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 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. 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.* § 552.110(b); *see also* ORD 661 at 5-6.

Although Rios seeks to withhold its entire proposal under section 552.110, we find Rios has failed to demonstrate its entire proposal meets the definition of a trade secret. However, having considered Rios’s arguments against the release of its client list, we find Rios has established a *prima facie* case portions of its client list, which we have marked, constitute trade secret information. Therefore, the district must withhold the information we have marked pursuant to section 552.110(a). We note, however, Rios publishes the identities of some of its clients on its website. In light of Rios’s own publication of such information, we cannot conclude the identities of these published clients qualify as trade secrets. We understand ARCBridge to object to the release of some of its proposal based on its

¹The 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* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

representation that its proposal “contains company specific proprietary information and trade secrets that will be detrimental to [the company] if publicly released.” Thus, we understand ARCBridge to raise section 552.110(a) for its proposal. However, ARCBridge has provided no arguments in support of its objection to disclosure. Upon review, we find ARCBridge failed to demonstrate its information at issue meets the definition of a trade secret. Thus, the district may not withhold any portion of Rios’s remaining information at issue or any portion of ARCBridge’s proposal under section 552.110(a).

Rios also claims its remaining information at issue is subject to section 552.110(b). As noted above, Rios publishes the identities of some of its clients on its website. Thus, Rios has failed to demonstrate release of this information would cause it substantial competitive harm. Furthermore, upon review of Rios’s and ARCBridge’s arguments, we find these companies have provided conclusory arguments that release of their remaining information at issue would cause them substantial competitive harm. Thus, Rios and ARCBridge have not made the specific factual or evidentiary showing required by section 552.110(b) that substantial competitive injury would result from the release of any of their remaining information. *See* ORD 661. Accordingly, the district may not withhold any of the remaining information at issue pursuant to section 552.110(b).

In summary, the district must withhold the information we have marked under section 552.110(a) of the Government Code. The remaining 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 409663

Enc. Submitted documents

c: Requestor
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