



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2011

Ms. Connie Crawford  
Assistant County Attorney  
El Paso County  
4815 Alameda, 8<sup>th</sup> Floor, Suite B  
El Paso, Texas 79905

OR2011-08439

Dear Ms. Crawford:

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# 420660 (El Paso File Nos. HO-11-69 and HO-11-075).

The El Paso County Hospital District (the "district") received two requests for the responses received and the resulting contract regarding a specified RFQ.<sup>1</sup> You state there is no responsive contract because the district is still reviewing bids. Although you raise no exceptions to disclosure of the submitted information, you state release of this information may implicate the proprietary interests of third parties. Thus, you provide documentation showing you notified Springfield Service Corporation ("Springfield") and Medical Billing Unlimited, Inc. ("MBU") of the request and their right to submit arguments to this office explaining why their information should not be released. *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 certain circumstances). We have received comments from Springfield and MBU. We have considered their arguments and reviewed the submitted information.

We first note that although Springfield raises section 552.101 of the Government Code, Springfield does not present any arguments explaining how that exception applies to the

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<sup>1</sup> You state, and provide documentation showing, the district sought and received clarification of one of the requests. *See* Gov't Code § 522.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

submitted information. Thus, the district may not withhold any of the submitted information under section 552.101.

Springfield next raises 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. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). Because the district does not argue section 552.104 is applicable, we will not consider Springfield's claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the district may not withhold any of the submitted information under section 552.104.

Springfield and MBU both raise section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure (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 a "trade secret" from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Record Decision No. 552 (1990). Section 757 defines 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 a single or ephemeral event 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. 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 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.<sup>2</sup> Open Records Decision No. 402 (1983).

Section 552.110(b) 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. *See* Open Record Decision No. 661 at 5-6 (1999) (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).

MBU and Springfield both argue portions of their information constitute trade secrets that are confidential under section 552.110(a). We find the information MBU seeks to withhold, which we have marked, and the portions of Springfield's information that we have marked, consist of trade secrets the district must withhold under section 552.110(a). However, we find Springfield has not demonstrated any of the remaining information it seeks to withhold meets the definition of a trade secret. We note information pertaining to a particular contract, including pricing information from a particular proposal, 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); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3. Thus, the district may not withhold any of Springfield's remaining information under section 552.110(a).

Springfield and MBU both claim the remaining information they seek to withhold is excepted from disclosure under section 552.110(b). Upon review, we find MBU and Springfield have established the pricing information MBU seeks to withhold, which we have marked, and the pricing information we have marked in Springfield's information, constitute commercial or financial information, the release of which would cause the companies substantial competitive harm. Therefore, the district must withhold the information we marked under section 552.110(b). However, we find Springfield has made only conclusory allegations that release of any of the remaining information it seeks to withhold would result in substantial harm to their competitive position. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because 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, and qualifications are not ordinarily excepted from

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<sup>2</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; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

disclosure under statutory predecessor to section 552.110). Consequently, the district may not withhold any of the remaining information under section 552.110(b).

We note a portion of MBU's remaining information is subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], 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(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the district must withhold the insurance policy number we have marked under section 552.136.<sup>4</sup>

In summary, the district must withhold the information we have marked under sections 552.110 and 552.136 of the Government Code. As no further exceptions to disclosure have been raised, the remaining 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](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/bs

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup> We note Open Records Decision No. 684 (2009) 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.

Ref: ID # 420660

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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