



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

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

OR2011-08575

Dear Ms. Angadicheril:

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# 421101 (OGC# 136722).

The University of Texas Southwestern Medical Center ("UTSW") received a request for records of UTSW's evaluation of the responses to a specified request for proposals. You take no position on the public availability of the requested information.¹ You believe, however, the requested information may implicate the interests of AHI Facility Services, Inc.; Aztec Facility Management, LP; CareMaster Building Services ("CareMaster"); GCA Services; Marcis & Associates, Inc.; Members Building Maintenance, LTD; Mendoza Maintenance Group, Inc.; OJS Systems, Inc.; Premier Cleaning Services; Pritchard Industries Southwest, Inc. ("Pritchard"); and Servicemaster Clean. You inform us the interested parties were notified of the instant request for information and of their right to submit arguments to this office as to why the requested information should not be released.² We received

¹We note UTSW initially claimed section 552.104 of the Government Code but has since withdrawn its assertion of that exception.

²See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

correspondence from CareMaster and an attorney for Pritchard. We have considered CareMaster's and Pritchard's arguments and reviewed the submitted information.³

We first 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 that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, only CareMaster and Pritchard have submitted arguments to this office. Therefore, because the remaining third parties have not demonstrated any of the information at issue is proprietary for purposes of the Act, UTSW may not withhold any of the submitted information on the basis of any interest the remaining third parties may have in the information. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we consider CareMaster's and Pritchard's arguments.⁴ CareMaster claims section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information considered to be confidential under other constitutional, statutory, or case law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). We note common-law privacy protects the interests of individuals, not those of business and governmental entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). In this instance, CareMaster has not directed our attention to any law under which any of the submitted information is considered to be confidential for purposes of section 552.101. We therefore conclude UTSW may not withhold any of the submitted information under section 552.101 of the Government Code.

Pritchard claims 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

³We note the arguments we received from CareMaster and Pritchard encompass information UTSW has not submitted to this office. This decision is applicable only to the information in the "RFP Bid Tabulation Sheet" UTSW submitted in requesting this decision. *See* Gov't Code § 552.301(e)(1)(D).

⁴We note CareMaster states, among other things, that the company "does not waive any exception that may be applicable[,] and this letter should be interpreted to include all exceptions contained in [the Act]." We note a party claiming an exception to disclosure under the Act must generally submit written comments stating why a particular exception is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); ORD 542. Accordingly, this decision addresses only the exceptions CareMaster has specifically claimed and argued.

§ 552.104(a). This exception protects the competitive interests of governmental bodies, not the proprietary interests of private parties. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, UTSW initially raised section 552.104(a) but has since withdrawn its assertion of that exception. We therefore conclude UTSW may not withhold any of the submitted information under section 552.104 of the Government Code.

CareMaster also claims section 552.110 of the Government Code for its pricing and other information.⁵ Section 552.110 protects the proprietary interests of private parties with respect to two types of information: “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “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).

The Supreme Court of Texas 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 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees 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 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 the person establishes a *prima facie* case for the exception, and no one

⁵Although Pritchard also claims section 552.110 of the Government Code, the company’s arguments do not encompass any of the information UTSW submitted in requesting this decision. Therefore, we do not address Pritchard’s arguments under section 552.110.

submits an argument that rebuts the claim as a matter of law.⁶ *See* ORD 552 at 5. We cannot conclude that section 552.110(a) is applicable, however, 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) 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* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered CareMaster's arguments, we conclude UTSW must withhold the company's pricing information, which we have marked, under section 552.110(b). We find CareMaster has neither demonstrated any of the remaining information at issue constitutes a trade secret under section 552.110(a) nor made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information would cause CareMaster substantial competitive harm. We therefore conclude UTSW may not withhold any of the remaining information under section 552.110 of the Government Code.

In summary, UTSW must withhold the information we have marked under section 552.110(b) of the Government Code. UTSW must release the rest of the submitted information.

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

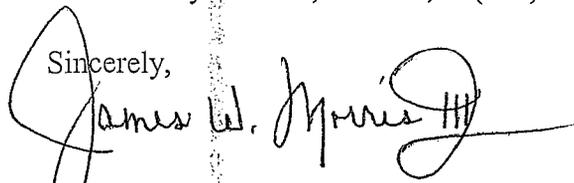
⁶The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (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).

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 421101

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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