



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Mr. Hal C. Hawes
Legal Advisor
Office of the County Judge
Williamson County
710 Main Street, Suite 200
Georgetown, Texas 78626

OR2011-09506

Dear Mr. Hawes:

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# 422707.

Williamson County (the "county") received a request for the Vendor Exceptions Worksheet for RFP Section 2 (II) - System Concept & Solution and all submitted pricing for the RFP for CAD, MDCS/AVL, LERMS/FBR and FRMS Data Consolidation, excluding information from the requestor's company and vendor financial information.¹ Although you take no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Hitech Systems, Inc. ("Hitech"); Intergraph Corporation ("Intergraph"); New World Systems ("New World"); Presynct Technologies, Inc. ("Presynct"); Trittech Software Systems ("Trittech"); and Tyler Technologies, Inc. ("Tyler"). You inform us, and provide documentation showing, pursuant to section 552.305 of the Government Code, the county has notified these third parties of the

¹You state, and provide documentation demonstrating, the county sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information 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); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't 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 correspondence from Presynct and Tritech. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may be the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-09371 (2010). In that decision, we ruled some of the information at issue in that ruling was excepted from disclosure under section 552.110(a) of the Government Code, but that the county must release the remaining information. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the county must continue to rely on that ruling as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted responsive information was not previously ruled upon, we will consider the submitted arguments against disclosure.

We note 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Presynct and Tritech. Thus, we, have no basis for concluding any portion of the submitted information constitutes the proprietary information of Hitech, Intergraph, New World, or Tyler. *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. Accordingly, the county may not withhold any of the submitted information based on the proprietary interests of any of the remaining third parties.

Next, we note Trittech and Presynct seek to withhold information that the county did not submit for our review.² Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the county. *See Gov't Code § 552.301(e)(1)(D)* (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Presynct claims section 552.110 of the Government Code for portions of the 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. *Id.* § 552.110(a), (b). Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A “trade secret” has been defined as the following:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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) (citation omitted); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

²We note the requestor excluded “vendor financial information that was submitted for the [county] RFP 09WCP817” from her request.

- (1) the extent to which the information is known outside of [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; and
- (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* ORD 232. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 2 (1990). 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. Open Records Decision No. 402 (1983).

Section 552.110(b) excepts from disclosure “[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). 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 requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Presynct argues portions of its information constitutes trade secrets. Upon review, we find Presynct has established a *prima facie* case that portions of its submitted information, which we have marked, constitute trade secrets. Accordingly, the county must withhold the information we have marked under section 552.110(a) of the Government Code. However, we find Presynct has failed to demonstrate any of the remaining information for which it asserts section 552.110(a) meets the definition of a trade secret, nor has Presynct demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the county may not withhold any of the remaining information on the basis of section 552.110(a) of the Government Code.

Presynct also assert portions of its information are excepted from disclosure under section 552.110(b). After reviewing the submitted arguments and the information at issue, we conclude Presynct has failed to provide specific factual evidence demonstrating release of any of its information would result in substantial competitive harm to the company. *See* Open Records Decision Nos. 661 (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), 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 disclosure under statutory predecessor to section 552.110). Accordingly, the county may not withhold any of Presynct's information pursuant to section 552.110(b) of the Government Code.

We note the remaining information contains motor vehicle information that is subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Accordingly, the county must withhold the motor vehicle information we have marked under section 552.130 of the Government Code.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the county must continue to rely on Open Records Letter No. 2010-09371 as a previous determination and withhold or release any previously ruled upon responsive information in accordance with that prior ruling. The county must withhold the information we have marked under section 552.110(a) of the Government Code. The county must also withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released, but any

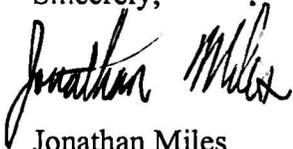
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information that is protected by copyright may only be released in accordance with copyright law.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eb

Ref: ID# 422707

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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