



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2011

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2011-10104

Dear Mr. Meitler:

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# 423989 (TEA PIR# 15304).

The Texas Education Agency (the "agency") received a request for the application and proposal for approval to implement a fully online alternative certification program submitted by A+ Texas Teachers. You state the agency has redacted an e-mail address pursuant to Open Records Decision No. 684 (2009).¹ Although you take no position with respect to the public availability of the remaining requested information, you state the proprietary interests of a third party might be implicated. Accordingly, you notified A+ Texas Teachers d/b/a Texas Teachers of Tomorrow ("Texas Teachers") of the request and of its right to submit arguments to this office explaining why its 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 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 submitted by Texas Teachers and reviewed the submitted information. We have also considered arguments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments to this office stating why the information at issue should or should not be released).

¹We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Initially, we address the requestor's comments that the agency has not submitted for our review the information she seeks. We note the agency is required to make a good-faith effort to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990). Thus, as the agency has submitted information it deems to be responsive to the request, we will address the public availability 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. *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, 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 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* *Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). 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.² 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*

²The 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).

case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). 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.*; *see also* Open Records Decision No. 661 at 5.

Texas Teachers asserts section 552.110(a) for the entirety of its information. Having considered its arguments, we find Texas Teachers has not demonstrated how any of the submitted information constitutes a trade secret under section 552.110(a) of the Government Code. Therefore, the agency may not withhold any of the submitted information under section 552.110(a) of the Government Code.

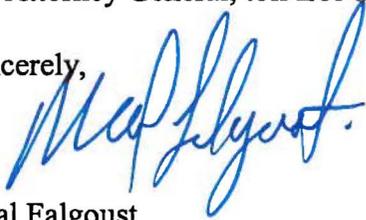
Texas Teachers asserts section 552.110(b) for portions of the submitted information that consist of startup expenses and other financial information. Texas Teachers states this information is known by only its senior management. It explains this detailed information could be used by its competitors to the harm of Texas Teachers because it is not available to the general public. Based on these representations, we find Texas Teachers has established the financial and budget information we have marked is commercial or financial information, the release of which would cause it substantial competitive injury. The agency must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find Texas Teachers has failed to demonstrate any of the remaining information consists of commercial or financial information, the release of which would cause it substantial competitive injury. Accordingly, the agency may not withhold any of the remaining information under section 552.110(b) of the Government Code. As neither the agency nor Texas Teachers raise any other exceptions to disclosure, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 423989

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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For Texas Teachers of Tomorrow
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(w/o enclosures)