



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Ms. Lauren O'Connor
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-14814

Dear Ms. O'Connor:

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# 433784 (San Antonio File No. W002682-080511).

The City of San Antonio (the "city") received a request for copies of bids submitted in response to the City's Invitation for Best Value Bids No. A1367-09 and the score summary sheet used during the bidding process. You state the city has released the score summary sheet to the requestor. You also indicate a portion of the requested information has been destroyed pursuant to the city's records retention schedule.¹ Although the city takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Tri-Starr Personnel, LLC (Formerly Kennmark Bullock Personnel, LLC). Accordingly, you notified the company of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (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 to disclosure in certain circumstances). We have received comments from Tri-

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Starr Personnel, LLC (“Tri-Starr”). We have considered Tri-Starr’s arguments and reviewed the submitted information.

Tri-Starr claims that a portion of the submitted information is excepted from disclosure under section 552.110(a) of the Government Code as the trade secrets of Tri-Starr.² Gov’t Code § 552.110(a).

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”

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); *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:

(1) the extent to which the information is known outside of [the company’s] business;

²We note that some of the information that Tri-Starr seeks to withhold, specifically, its recruiting and retention plans and marketing strategies, were not submitted by the city for our review. This ruling does not address information beyond what the city has submitted to us for review. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

(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 this 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 (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).

Having considered Tri-Starr's arguments, we determine that it has established a *prima facie* case that a portion of the submitted information constitutes trade secrets for purposes of section 552.110(a). We have marked the information to be withheld under section 552.110(a). However, we find that none of the remaining submitted information that Tri-Starr seeks to withhold constitutes a trade secret for purposes of section 552.110(a). We note that information, including pricing information, pertaining to a particular proposal or contract 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." *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982). As the city raises no other exceptions to disclosure, the remaining submitted 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, 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,

A handwritten signature in cursive script that reads "Sean Opperman".

Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 433784

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Anita Asher-Curtis
President and CEO
Tri-Starr Personnel, LLC
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San Antonio, Texas 78216
(w/o enclosures)