



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2011

Ms. Sara Hoglund
Contract Administrator
Collin County
2300 Bloomdale Road, Suite 3160
McKinney, Texas 75071

OR2011-15416

Dear Ms. Hoglund:

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# 433834.

Collin County (the "county") received a request for the business requirements checklist and pricing information submitted in response to RFP No. 01134-10 (the "RFP").¹ Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified AMX International ("AMX"), Cedar Crestone, CGI Technologies and Solutions, Inc. ("CGI"), CherryRoad Technologies ("CherryRoad"), CIBER, Inc. ("CIBER"), Denovo Ventures, L.L.C. ("Denovo"), Gillani, Inc. ("Gillani"), Innoprise Software ("Innoprise"), Lawson Software ("Lawson"), Paradigm Analytics ("Paradigm"), and Tyler Technologies, Inc. ("Tyler") of the 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 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

¹We note the county sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

arguments submitted by CGI, CIBER, and CherryRoad.² Thus, we have considered these arguments and reviewed the submitted information.

Initially, we note the requestor has asked for only the business requirements checklist and pricing information submitted by each respondent. You have submitted additional information that falls outside the scope of this request. Thus, any information other than the business requirements checklist and pricing information is not responsive. Our ruling does not address the public availability of information that is not responsive to the request, and the county is not required to release non-responsive information. Accordingly, as CherryRoad seeks to withhold only information that falls outside the scope of the request, we do not address CherryRoad's arguments against disclosure.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice 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 letter, we have not received arguments from AMX, Cedar Crestone, Denovo, Gillani, Innoprise, Paradigm, Lawson, or Tyler. Thus, none of these third parties have demonstrated they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 responsive information on the basis of any proprietary interests these companies may have in the information.

Oracle seeks to withhold information based on the execution of confidentiality agreements. Information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See Attorney General Opinion JM-672* (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to

²We note CherryRoad has also submitted comments on behalf of Oracle America, Inc. (“Oracle”) for information contained in CherryRoad's proposal that Oracle seeks to protect.

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 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.³ This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* 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 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). We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply

³The 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 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 also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

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* ORD 661 at 5.

CGI, CIBER and Oracle argue that portions of the responsive information are protected as trade secrets under section 552.110(a) of the Government Code. Upon review, we find none of these third parties have demonstrated any of the responsive information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim. *See* RESTATEMENT OF TORTS § 757 cmt. b; ORD 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim). Accordingly, the county may not withhold any of the responsive information under section 552.110(a) of the Government Code.

CGI, CIBER, and Oracle also argue portions of the responsive information are protected under section 552.110(b) of the Government Code. Upon review, we find the pricing information pertaining to CGI and CIBER, which we have marked, constitutes commercial or financial information, the disclosure of which would cause substantial competitive harm. Accordingly, the county may withhold the information we have marked under section 552.110(b) of the Government Code. However, CGI, CIBER, and Oracle have not demonstrated how any of the remaining responsive information constitutes commercial or financial information, the disclosure of which would cause substantial competitive harm. Accordingly, the county may not withhold any of the remaining responsive information on that basis.

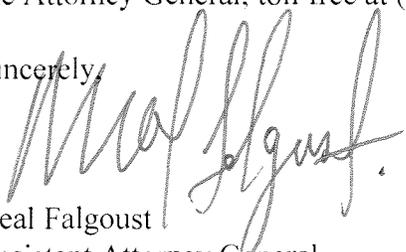
In summary, the county need not release information that is not responsive to the request. The county must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining responsive information must be released.

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/agn

Ref: ID# 433834

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