



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2011

Mr. Warren M.S. Ernst  
Chief of General Counsel  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2011-15715

Dear Mr. Ernst:

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# 434568.

The City of Dallas (the "city") received a request for a copy of the most recent vendor pool list from the North Central Texas Regional Certification Agency (the "NCTRCA"). Although the city takes no position with respect to the public availability of the requested information, you state its release may implicate the proprietary interests of the NCTRCA. Accordingly, the city notified the NCTRCA of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *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 the applicability of exception to disclose under Act in certain circumstances). We have considered the comments submitted by the NCTRCA and reviewed the submitted information.

Initially, the NCTRCA argues that because it is not an entity subject to the Act, the submitted information should not be released. Section 552.021 of the Government Code provides for public access to "public information," *see* Gov't Code § 552.021, which is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). In this instance, we need not address the NCTRCA's arguments that it is not subject to the Act. The request for information was submitted to the city, a governmental body, for records the city collects and maintains in connection with the transaction of its official business. Therefore, we

conclude the requested vendor pool list is public information that must be released, unless the NCTRCA demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021.

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 763, 776 (Tex. 1958). This office will accept a private person’s claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument 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.<sup>1</sup> *Open Records Decision No. 402* (1983).

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<sup>1</sup>The 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 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 [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.

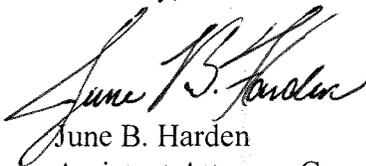
RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Open Records Decision Nos. 319 at 2* (1982), *306 at 2* (1982), *255 at 2* (1980).

The NCTRCA explains that it was created and organized to provide certification and other related services for Disadvantaged, Minority and /or Woman-Owned Business Enterprises. The NCTRCA further explains that the vendor pool list is for the exclusive use of its fee-paying members and cannot be acquired or duplicated by others as it is created through the NCTRCA's unique certification process. If the vendor pool list is publicly disclosed, the NCTRCA states it will suffer severe economic harm because entities will no longer need to pay a membership fee for access to the requested information. Based on its representations and our review, we agree the vendor pool list is the NCTRCA's trade secret information. Accordingly, the requested information is excepted from disclosure under section 552.110(a).

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](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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/bs

Ref: ID# 434568

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)