



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2011

Ms. Leticia McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2011-16241

Dear Ms. McGowan:

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# 435204 (ORR# 10498).

The Dallas Independent School District (the "district") received a request for information related to the district's current Immigration Legal Services contract, including (1) the most recent request for proposals, (2) the proposal packet for the current contract holder, and (3) the current executed contract. You state the district will release the blank documentation from the previous bid opportunity. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also explain this information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified the law firm Ramirez & Associates, P.C. ("R&A"), of the request for information and of the firm's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments received from R&A.

You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code, which excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The

purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

The submitted information consists of legal services provider contracts between the district and R&A for 2009-2010 and 2008-2009, and the proposal submitted by R&A in response to the district's 2008 request for proposals ("RFP") for legal services. You state the district recently released a request for qualifications ("RFQ") for legal services, including immigration legal services. You assert release of the submitted information at this time would jeopardize the district's bargaining position when entering into negotiations related to the current RFQ. Upon review, however, we find you have failed to demonstrate how release of the submitted information, which pertains to a previous RFP and related executed contracts, would harm the district's interests in a competitive situation. Accordingly, the district may not withhold the submitted information under section 552.104 of the Government Code.

R&A argues portions of its information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure (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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Record Decision No. 552 (1990). Section 757 defines 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 a single or ephemeral event 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 Huffines*, 314 S.W.2d at 776. 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* ORD 552 at 5. 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).

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 information at issue. *See* Open Record Decision No. 661 at 5-6 (1999) (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).

Upon review, we find R&A has established a *prima facie* case that its customer information, which we have marked, constitutes trade secret information for purposes of section 552.110(a). Accordingly, the district must withhold the information we have marked under section 552.110(a). However, we find R&A has not demonstrated the remaining information it seeks to withhold constitutes trade secrets for purposes of section 552.110(a). *See* Open Records Decision Nos. 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), 319 at 3 (1982) (information relating to organization and personnel, market studies, qualifications and experience, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). We note that 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, 306 at 3 (1982). Therefore, the district may not withhold any of the remaining information under section 552.110(a) of the Government Code.

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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; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

In addition, we find R&A has not established by a factual or evidentiary showing that release of the remaining information at issue would cause the company substantial competitive injury for purposes of section 552.110(b). *See* ORD 661. Furthermore, we note that pricing information of a winning bidder, as R&A is in this case, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a company contracting with a governmental body is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Therefore, we determine none of the remaining information is excepted from disclosure under section 552.110(b).

We note a portion of the remaining information may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

We have marked district employees' personal information in the remaining information. You have not informed us whether or not the employees timely chose to not allow public access to their personal information. Therefore, if the employees timely requested confidentiality for their personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employees did not timely request confidentiality, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

A portion of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.130(a)(2)). Accordingly, the district must withhold the information we have marked under section 552.130 of the Government Code.

Finally, we note the remaining information contains insurance policy numbers. Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the district must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

In summary, the district must withhold the information we have marked under sections 552.110, 552.130, and 552.136 of the Government Code. If the district employees timely requested confidentiality for their personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employees did not timely request confidentiality, the marked information must be released along with the remaining information.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 435204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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