



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2011

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-17697

Dear Mr. Thompson:

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# 437686.

The Corpus Christi Independent School District (the "district") received a request for (1) scoring evaluations and composite score pertaining to the selection of the architect and engineer for two specified projects; (2) the statement of qualifications submitted by Gignac & Associates, L.L.P. ("Gignac") and PBK Architects, Inc. ("PBK") for the two specified projects; (3) contracts between the district and Gignac related to the two specified projects and all elementary schools over a specified time period; and (4) contracts between the district and AG|CM, Inc. over a specified time period. You state the information responsive to categories (1), (3), and (4) above is being provided to the requestor. Although we understand you to take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Gignac and PBK. Accordingly, you state, and provide documentation showing, you notified Gignac and PBK of the request for information and of their 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) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from an attorney representing Gignac. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received

comments from PBK explaining why its information should not be released. Therefore, we have no basis to conclude PBK has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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 district may not withhold any of the information at issue on the basis of any proprietary interest PBK may have in it.

Gignac raises section 552.110 of the Government Code.¹ Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision,” and (2) “commercial 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.” *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 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 Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person’s claim for exception

¹Although Gignac also raises sections 552.101 and 552.153 of the Government Code, the company has submitted no arguments in support of the applicability of these exceptions. Accordingly, this decision does not address Gignac’s assertions of sections 552.101 and 552.153. *See* Gov’t Code §§ 552.301(e)(1)(A), 302. Gignac also raises section 552.305 as an exception to disclosure. We note, however, section 552.305 is not an exception to disclosure under the Act. Rather, section 552.305 is a procedural provision permitting a governmental body to withhold information that may be private or proprietary while the governmental body is seeking an attorney general’s decision under the Act. *See id.* § 552.305.

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.² 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 Records 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 of Gignac's arguments and the information at issue, we find Gignac has failed to demonstrate that any of the submitted information meets the definition of a trade secret, nor has Gignac demonstrated the necessary factors to establish a trade secret claim for this information. *See* Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Thus, the district may not withhold any of the submitted information under section 552.110(a) of the Government Code.

Upon review of Gignac's arguments and the information at issue, we find Gignac has made only conclusory allegations that the release of the submitted information would result in substantial damage to its competitive position. Thus, Gignac has not demonstrated substantial competitive injury would result from the release of any of the submitted information. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, the district may not withhold any of the submitted information pursuant to

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 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.

section 552.110(b). As no other exceptions have been raised, the submitted 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 437686

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Cignac & Associates, L.L.P.
c/o Mr. J. A. Canales
Canales & Simonson, P.C.
P.O. Box 5624
Corpus Christi, Texas 78465-5624
(w/o enclosures)

Mr. Joel E. Hernandez
PBK Architects, Inc.
601 Northwest Loop 410, Suite 400
San Antonio, Texas 78216
(w/o enclosures)