



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2011

Mr. Eric Bentley  
Assistant General Counsel  
Office of the General Counsel  
University of Houston System  
311 E. Cullen Building  
Houston, Texas 77204-2028

OR2011-18428

Dear Mr. Bentley:

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# 440434.

The University of Houston (the "university") received a request for the winning proposal submitted in response to RFP 730-072511-CEB. Although you take no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of Alloy Media, LLC d/b/a Carnegie Communications ("Carnegie"). Accordingly, you notified Carnegie 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 that 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 received comments from Carnegie. We have reviewed the submitted arguments and the submitted information.

Initially, we must address the university's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within

ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the university received the request for information on October 3, 2011. Accordingly, the ten-business-day deadline was October 17, 2011. However, you did not seek an attorney general's decision until October 18, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the university failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.— Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.— Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third party interests can provide compelling reasons to overcome this presumption, we will consider whether or not the submitted information is excepted from disclosure under the Act.

Next, we note Carnegie seeks to withhold information the university has not submitted for our review. This ruling does not address information beyond what the city has submitted to us for review. *See* Govt Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for information. *See id.*

Carnegie claims section 552.110 for portions of the submitted information. 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 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).

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.* § 552.110(b); Open Records Decision No. 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).

Carnegie seeks to withhold its references and organizational chart under section 552.110(a) of the Government Code. We note Carnegie has made the identities of all of the references it seeks to withhold publicly available on its website. Because Carnegie has published this information it has failed to demonstrate this information is a trade secret, and none of it may be withheld under section 552.110(a). Additionally, we find Carnegie has failed to establish how its organizational chart constitutes a trade secret under section 552.110(a). *See* ORDs 402 (section 552.110(a) does not apply unless information meets definition of trade

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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).

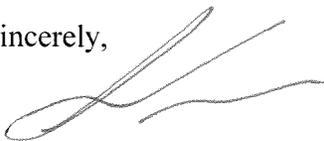
secret and necessary factors have been demonstrated to establish trade secret claim); 319 at 2 (information relating to organization, personnel, market studies, professional references, qualifications, and experience not excepted under section 552.110). Thus, no portion of the information at issue may be withheld under section 552.110(a).

Carnegie also raises section 552.110(b) of the Government Code for its references and organizational chart. As previously stated, Carnegie has made its references publicly available on its website. Because Carnegie has published this information, it has failed to demonstrate how release of this information would cause it substantial competitive injury. Further, we find Carnegie has made only conclusory allegations that release of its organizational chart would result in substantial damage to its competitive position and has provided no specific factual or evidentiary showing to support such allegations. *See* ORD 661 (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); *see also* ORD 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and experience are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the university may not withhold any of the information at issue under section 552.110(b). As no other exceptions to disclosure are raised, the university must release the submitted 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 440434

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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