



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2011

Mr. Robert W. Patterson  
Open Records Coordinator  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711-3247

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2011-18560

Dear Mr. Patterson:

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# 439175.

The Texas Health and Human Services Commission (the "commission") received two requests for documents pertaining to the award of three contracts for translation services. You state the commission released some of the responsive information. Although the commission takes no position on the public availability of the submitted information, you state the release of the submitted information may implicate the proprietary interests of Carmazzi of Florida, Inc. ("Carmazzi"); Geneva Worldwide, Inc. ("Geneva"); and MasterWord Services, Inc. ("MasterWord"). Accordingly, you notified these companies of this 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); 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 received comments from an attorney for MasterWord. We have considered the submitted arguments and reviewed the submitted information.

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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). Although the commission states Carmazzi and Geneva object to the release of the information pertaining to each company, as of the date of this

letter, neither company has submitted comments to this office explaining how the release of the information at issue will affect their proprietary interests. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the proprietary interests of Camazzi or Geneva. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the commission may not withhold any portion of the submitted information on the basis of any proprietary interest Carmazzi or Geneva may have in the submitted information.

Next, we note MasterWord seeks to withhold information the commission has not submitted for our review. This ruling does not address information beyond what the commission has submitted to us for review. *See* Gov't 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 commission submitted as responsive to the request for information. *See id.*

MasterWord raises section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104. Section 552.104, however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions in general). As the commission does not seek to withhold any information pursuant to this exception, we find section 552.104 is not applicable to the submitted information. *See* ORD 592 (governmental body may waive section 552.104). Accordingly, none of the submitted information may be withheld under section 552.104.

MasterWord also raises section 552.110 of the Government Code for the submitted information, which includes MasterWord's pricing information and a subcontracting form. Section 552.110 protects (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 trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552 at 2. Section 757 provides that a trade secret is:

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 Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of a trade secret as well as the Restatement's list of six trade secret factors.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939). 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* ORD 552 at 5. However, we cannot conclude 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).

Section 552.110(b) of the Government Code 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.

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

After reviewing MasterWord's information and the submitted arguments, we find MasterWord has failed to demonstrate any of the information at issue meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* 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). We also note pricing information pertaining to a particular solicitation 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; ORD 319 at 3, 306 at 3. Therefore, the commission may not withhold any portion of MasterWord's information under section 552.110(a) of the Government Code.

Furthermore, we find MasterWord has not made the specific factual or evidentiary showing required under section 552.110(b) of the Government Code that the release of the information at issue would likely result in substantial competitive harm to MasterWord. *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). We also note the pricing information of a winning bidder, such as MasterWord, is generally not excepted from disclosure under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *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, the commission may not withhold any portion of MasterWord's information under section 552.110(b).

Section 552.136 of the Government Code provides in part 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."<sup>2</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the commission must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As no other exceptions to disclosure are raised, the remaining information must be released.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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# 439175

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. William Whalen  
Geneva Worldwide, Inc.  
261 West 35<sup>th</sup> Street, Suite 700  
New York, New York 10001  
(w/o enclosures)

Mr. John C. Allen  
For MasterWord Services, Inc.  
909 Fannin, Suite 1225  
Houston, Texas 77010  
(w/o enclosures)

Ms. Jen Weaver  
Carmazzi of Florida, Inc.  
8926 Beckington Drive  
Elk Grove, California 95624  
(w/o enclosures)

Filed in The District Court  
of Travis County, Texas

Scd NOV 12 2015

At 8:43 A.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-11-003945

MASTERWORD SERVICES, INC.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	353rd JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY	§	
GENERAL OF THE STATE OF	§	
TEXAS, and THE TEXAS	§	
HEALTH AND HUMAN SERVICES	§	
COMMISSION,	§	
	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which MasterWord Services, Inc. (MasterWord), sought to withhold certain information, which is in the possession of the Texas Health and Human Services Commission (HHSC), from public disclosure. All matters in controversy between Plaintiff, MasterWord, and Defendants, Ken Paxton<sup>1</sup>, Attorney General of Texas (Attorney General), and HHSC arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Bill Crocket, on October 19, 2015, informing him of the setting of this matter on the

<sup>1</sup> Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.



uncontested docket on this date. The requestor was informed of the parties' agreement that HHSC must withhold the designated portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this motion.

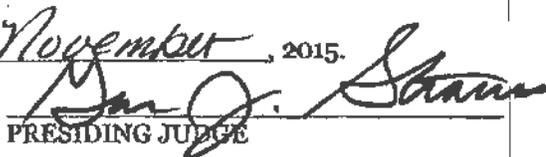
The requestor has not filed a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

**IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:**

1. MasterWord, the Attorney General, and HHSC have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, HHSC must redact certain pricing information in accordance with the markings provided to HHSC by the Attorney General;
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between MasterWord, the Attorney General, and HHSC and is a final judgment.

SIGNED the 12<sup>th</sup> day of November, 2015.

  
PRESIDING JUDGE

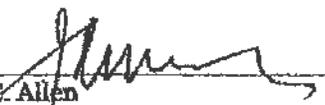
Agreed Final Judgment  
Cause No. D-1-GN-11-003945

AGREED:

  
\_\_\_\_\_  
KIMBERLY FUCHS

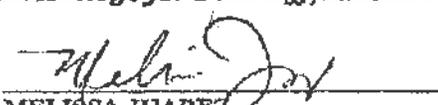
Texas Bar No. 24044140  
Chief, Open Records Litigation  
Administrative Law Division  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4195  
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**Attorney for Defendant, Ken Paxton**

  
\_\_\_\_\_  
John C. Allen

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909 Fannin Street  
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713-654-7074 (Facsimile)

**Attorneys for Plaintiff, MasterWord Services, Inc.**

  
\_\_\_\_\_  
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**Attorney for Defendant, Texas Health and Human Services Commission**

Agreed Final Judgment  
Cause No. D-1-GN-11-003945

**A**

Cause No. D-1-GN-11-003945

<b>MASTERWORD SERVICES, INC.,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>353rd JUDICIAL DISTRICT</b>
	§	
<b>GREG ABBOTT, ATTORNEY</b>	§	
<b>GENERAL OF THE STATE OF</b>	§	
<b>TEXAS, and THE TEXAS</b>	§	
<b>HEALTH AND HUMAN SERVICES</b>	§	
<b>COMMISSION,</b>	§	
	§	
<b>Defendants.</b>	§	<b>TRAVIS COUNTY, TEXAS</b>

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between MasterWord Services, Inc. (MasterWord), Ken Paxton<sup>1</sup>, Attorney General of Texas (the Attorney General), and the Texas Health and Human Services Commission (HHSC). This Agreement is made on the terms set forth below.

**Background**

On September 27, 2011, Bill Crocket requested information from HHSC under the Public Information Act (PIA). Some of the responsive information belonged to MasterWord, so HHSC made MasterWord aware of this request.

HHSC asked for an open records ruling from the Attorney General, pursuant to the PIA, Texas Government Code section 552.301. MasterWord submitted comments to the Attorney General, asserting, in pertinent part, that the information was excepted from disclosure by Texas Government Code sections 552.110 and 552.104.

<sup>1</sup> Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.

In Letter Ruling OR2011-18560, the Open Records Division of the Attorney General (ORD) required HHSC to release some information MasterWord claims is proprietary. The Attorney General found that MasterWord failed to meet its burden of showing that the information met the definition of a trade secret and that MasterWord's claim that it would suffer substantial competitive harm was speculative. The Attorney General also found that Texas Government Code section 552.104 could not be raised by a third party. MasterWord disputed the ruling and filed the above styled and captioned lawsuit to preserve its rights under the PIA.

MasterWord submitted additional information to the Attorney General establishing that some of the information at issue was excepted from disclosure under Texas Government Code section 552.014 as competitive bidding information, which the Texas Supreme Court's *Boeing Company v. Paxton* (58 Tex. Sup. Ct. J. 1246 (Tex. 2015) (SW 3d cite not yet available)) opinion determined may be raised by a third party, and may be raised after bidding has closed and a contract has been awarded. Accordingly, MasterWord, HHSC, and the Attorney General agree to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

#### Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. MasterWord, the Attorney General, and HHSC have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant

to Texas Government Code section 552.104, HHSC must redact certain pricing information that constitutes bidding information, in accordance with the markings provided to HHSC by the Attorney General. Counsel for the Attorney General will send a letter to HHSC's counsel identifying the portion of the information at issue that is to be released and the portion of the information at issue that is to be withheld.

2. MasterWord, HHSC, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor.

3. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest MasterWord's right to have HHSC withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear its own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. MasterWord warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release

of all claims that MasterWord has against the Attorney General and/or HHSC arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against MasterWord and/or HHSC arising out of the matters described in this Agreement.

9. HHSC warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of HHSC and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the HHSC has against MasterWord and/or the Attorney General arising out of the matters described in this Agreement.

10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties signs this Agreement.

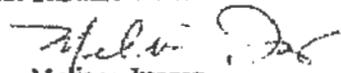
MASTERWORD SERVICES, INC.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By:   
name: John Allen  
title: John C. Allen, PC  
Date:

By:   
name: Kimberly Fuchs  
title: Assistant Attorney General,  
Administrative Law Division  
Date: 10/19/15

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

By:   
name: Melissa Juarez  
title: Assistant Attorney General,  
Administrative Law Division  
Date: 10/14/15