



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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

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

January 6, 2012

Ms. Cynthia Villarreal-Reyna  
Director, Office of Agency Counsel  
Legal Section, General Counsel Division MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2012-00293

Dear Ms. Villarreal-Reyna:

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# 445994 (TDI# 120423).

This office has been asked to reconsider Open Records Letter No. 2011-18038 (2011), which we issued on December 7, 2011. We note a governmental body is prohibited from asking this office to reconsider a decision issued under section 552.306 of the Government Code. *See* Gov't Code § 552.301(f). Furthermore, there has been no demonstration that this office made an error in issuing the prior ruling. Nevertheless, we have determined the prior ruling should be corrected for purposes of due process. *See id.* §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2011-18038 and serves as the correct ruling.

The Texas Department of Insurance (the "department") received a request for a contract and bidding information involving interpreter services. You indicate some of the requested information either has been or will be released. Although you take no position on its public availability, you believe the submitted information may implicate the interests of MasterWord Services, Inc. ("MasterWord"). You inform us MasterWord was notified of this request for information and of its right to submit arguments to this office as to why the

submitted information should not be released.<sup>1</sup> We received arguments under sections 552.104 and 552.110 of the Government Code from an attorney for MasterWord. We have considered MasterWord's arguments and reviewed the information you submitted.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). This exception protects the competitive interests of governmental bodies, not the proprietary interests of private parties such as MasterWord. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Therefore, because the department does not claim an exception to disclosure under section 552.104(a), the department may not withhold any of the submitted information under section 552.104 of the Government Code.

Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "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." Gov't Code § 552.110(a)-(b).

The Supreme Court of Texas 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . 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) (emphasis added); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person's claim

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law.<sup>2</sup> See Open Records Decision No. 552 at 5 (1990). We cannot conclude section 552.110(a) is applicable, however, 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. See 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) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Among other things, MasterWord contends the company's pricing information is excepted from disclosure under both aspects of section 552.110. MasterWord acknowledges, however, and the department confirms, that MasterWord was the successful bidder. We note pricing information pertaining to a particular contract with a governmental body is generally not a trade secret under section 552.110(a) 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." RESTATEMENT OF TORTS § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 2 (1982), 306 at 2. Likewise, the pricing aspects of a contract with a governmental entity are generally not excepted from disclosure 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 344-45 (2009) (federal cases applying analogous Freedom of Information Act exemption reason that disclosure of prices charged government is a cost of doing business with government). We also note the terms of a contract with a governmental body are generally not excepted from public disclosure. See Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public

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<sup>2</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 Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

has interest in knowing terms of contract with state agency). We therefore conclude the department may not withhold any of MasterWord's pricing information under section 552.110.

Additionally, MasterWord contends its customer list and other information regarding the company are trade secrets under section 552.110(a). MasterWord also asserts section 552.110(b) is applicable to the information in question. Having considered all of MasterWord's arguments and reviewed the submitted information, we conclude the department must withhold the customer information we have marked under section 552.110(a). We find MasterWord has not established any of the remaining information at issue constitutes a trade secret for purposes of section 552.110(a). We also find MasterWord has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information at issue would cause MasterWord substantial competitive harm. We therefore conclude the department may not withhold any of the remaining information under section 552.110 of the Government Code. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 at 3 (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing).

We note the remaining information includes insurance policy numbers, which fall within the scope of section 552.136 of the Government Code.<sup>3</sup> Section 552.136(b) 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); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Therefore, the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the department must withhold (1) the marked customer information under section 552.110 of the Government Code and (2) the marked insurance policy numbers under section 552.136 of the Government Code. The rest of the submitted information must be released.

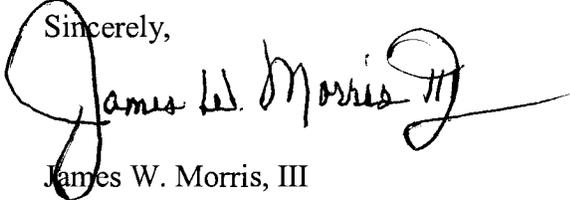
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>3</sup>This office will raise section 552.136 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 438464

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Mr. John C. Allen  
Attorney at Law  
909 Fannin Street Suite 1225  
Houston, Texas 77010-1019  
(w/o enclosures)

OCT 30 2013  
At 8:45A.M.  
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GN-12-000171

|                            |   |                         |
|----------------------------|---|-------------------------|
| MASTERWORD SERVICES, INC., | § | IN THE DISTRICT COURT   |
|                            | § |                         |
| Plaintiff,                 | § |                         |
|                            | § |                         |
| v.                         | § | 201st JUDICIAL DISTRICT |
|                            | § |                         |
| GREG ABBOTT, ATTORNEY      | § |                         |
| GENERAL OF THE STATE OF    | § |                         |
| TEXAS, and THE TEXAS       | § |                         |
| DEPARTMENT OF INSURANCE,   | § |                         |
|                            | § |                         |
| 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 Department of Insurance (TDI) from public disclosure. All matters in controversy between Plaintiff, Masterword, and Defendants, Greg Abbott, Attorney General of Texas (Attorney General), and TDI 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, Ms. Meg Matan, on OCT. 7, 2013, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that TDI must withhold the designated portions of

the information at issue. The requestor was also informed of her 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. Tex. Gov't Code § 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 TDI 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 Tex. Gov't Code §§ 552.110. Pursuant to Tex. Gov't Code §552.110, Masterword may withhold its interpreter list on TDI 0035-0036 to the extent the interpreter listed is currently a Masterword employee, and with the exception of the interpreters on the list who are also on the list of interpreters on TDI 0037-0041, which is on the court system's website and is therefore not secret. Any interpreters whose name appears on the public list TDI 0037-0041 cannot be considered a trade secret and must be released. Masterword may also withhold its interpreter orientation materials on TDI 0018 and information related to its language services management system found on TDI 0020-0024. Additionally, certain phrases appearing on pages TDI 006 and TDI 009 may be redacted. The pricing information contained on TDI 0042-0043 must be released to the requestor.

2. TDI must withhold or release the information as directed by the detailed instructions provided to TDI the Attorney General under separate cover. This document has been reviewed and agreed by all parties and is confidential pursuant to the previously filed protective order, as it contains descriptions of the information at issue.
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Masterword, the Attorney General, and TDI and is a final judgment.

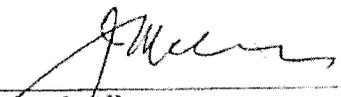
SIGNED the 30<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
PRESIDING JUDGE  
Tim Sulak

AGREED:

  
\_\_\_\_\_  
KIMBERLY FUCHS  
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**Attorney for Defendant, Greg Abbott**

  
\_\_\_\_\_  
John C. Allen  
T.B.A. No.: 01042800  
Jonathan Emmanuel

Agreed Final Judgment  
Cause No. D-1-GN-12-000171

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



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***Attorney for Defendant, Texas Department of Insurance***