



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2012

Ms. Angela M. Deluca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2012-03916

Dear Ms. Deluca:

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# 448109.

The City of Bryan (the "city") received two requests for information pertaining to request for proposal ("RFP") 11-030 Delinquent Collections. Although you take no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of third parties. You inform us, and provide documentation showing, pursuant to section 552.305 of the Government Code, the city has notified the interested third parties of the requests and of their right to submit arguments to this office explaining why their submitted information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception in certain circumstances). We have received comments from CSI, MSB, and

¹The notified third parties are: American Municipal Services ("AMS"); Client Services, Inc.; Credit Financial Services, Inc.; Credit Systems International, Inc. ("CSI"); Credit Watch Services, Ltd.; Lam, Lyn & Philip, P.C.; Gila, LLC d/b/a Municipal Services Bureau ("MSB"); National Recovery Agency ("NRA"); Nationwide Recovery Systems, Ltd.; Professional Bureau of Collections; RMK Holdings, Inc.; RSI Enterprises; Valley Collection Service, LLC; Windham Professionals, Inc.

NRA. We have considered the submitted arguments and reviewed the submitted information.

MSB states, and provides documentation showing, that it has exchanged correspondence with the first requestor concerning the first request. MSB further states that the submitted information contains its financial information and that the first requestor has agreed to exclude such information from her request. However, the city has not informed this office that the first requestor has contacted the city about narrowing the scope of, or withdrawing, her request, and therefore, we are unable to determine that any of the submitted information is no longer responsive to the first request. Therefore, as MSB has not raised any exceptions to disclosure under the Act or provided any arguments against disclosure, we are unable to conclude that MSB has a protected proprietary interest in its information. *See Gov't Code § 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 city may not withhold any portion of the submitted information based upon the proprietary interests of MSB.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, we have not received arguments from AMS; Client Services, Inc.; Credit Financial Services, Inc.; Credit Watch Services, LTD; Lam, Lyn & Philip, P.C.; Nationwide Recovery Systems, Ltd.; Professional Bureau of Collections; RMK Holdings, Inc.; RSI Enterprises; Valley Collection Service, LLC; or Windham Professionals, Inc. Thus, these third parties have failed to demonstrate a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); ORD Nos. 661 at 5-6, 552 at 5, 542 at 3. Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interests these third parties may have in the information.

CSI and NRA both assert that their proposals are excepted from disclosure pursuant to section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. However, section 552.104 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 a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the city does not seek to withhold any information pursuant to this exception, we find section 552.104 is not applicable to CSI's or NRA's proposals. *See ORD 592* (governmental body may waive section 552.104).

CSI and NRA both assert section 552.110 of the Government Code. 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, 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 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 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² 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* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the

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 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).

necessary factors have been demonstrated to establish a trade secret claim. 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. *See id.*; *see also* Open Records Decision No. 661 at 5 (1999).

Upon review, we find CSI has made a *prima facie* case that its customer information constitutes a trade secret. Accordingly, the city must withhold the customer information we have marked under section 552.110(a) of the Government Code. Upon further review, we find CSI and NRA have failed to demonstrate that any portion of the remaining submitted information meets the definition of a trade secret. *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). Accordingly, the city may not withhold any of the remaining information under section 552.110(a) of the Government Code.

Upon review, we find CSI has established that a portion of its information constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Accordingly, the city must withhold the information we have marked under section 552.110(b) of the Government Code. Upon further review, we find CSI and NRA have not established any of the remaining information constitutes commercial or financial information, the disclosure of which would cause these companies substantial competitive harm. Accordingly, the city may not withhold any of the remaining information under section 552.110(b) of the Government Code.

CSI raises section 552.136 of the Government Code for portions of its information. Section 552.136 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). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). This office has also concluded insurance policy numbers constitute access device numbers for the purposes of section 552.136. Upon review, we find CSI has failed to demonstrate how any of its information constitutes an access device number used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. Therefore, the city may not

withhold any of CSI's information under section 552.136 of the Government Code. We note some of the remaining proposals contain insurance policy numbers. Thus, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

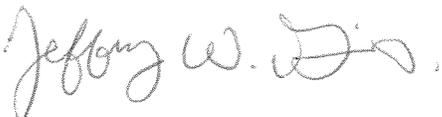
We note some of the remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977) A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we have marked under sections 552.110(a) and 552.110(b) of the Government Code. The city must also withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released in accordance with any applicable copyright law.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 448109

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Mr. Scott Lindley
Executive Vice President
Client Services, Inc.
3451 Harry S. Truman Boulevard
St. Charles, Missouri 63301
(w/o enclosures)

Ms. Lynn Campbell
Vice President of Operations
Credit Financial Services, Inc.
3800 Guess Road
Durham, North Carolina 27705
(w/o enclosures)

Mr. Ronald R. McLaughlin
RMK Holdings, Inc.
625 North Michigan Avenue
Chicago, Illinois 60611
(w/o enclosures)

Ms. Sherly Thomas-Philip
Lam, Lyn & Philip, P.C.
3555 Timmons Lane, Suite 790
Houston, Texas 77027
(w/o enclosures)

Mr. A. Lee Rigby
General Counsel
MSB
8325 Tuscany Way, Building 4
Austin, Texas 78754
(w/o enclosures)

Ms. Ashley A. Chille
Corporate Counsel
National Recovery Agency
P.O. Box 67015
Harrisburg, Pennsylvania, 17106-7015
(w/o enclosures)

Ms. Heidi Atencio
Vice President Client Services
Credit Watch Services, Ltd.
4690 Diplomacy Road, Suite 100
Fort Worth, Texas 76155
(w/o enclosures)

Mr. Dennis Dlabaj
Vice President, Sales
Nationwide Recovery Systems, Ltd.
2304 Tarpley Road, Suite 134
Carrollton, Texas 75006
(w/o enclosures)

Mr. Christian P. Ulrich
President & CEO
RSI Enterprises
5440 West Northern Avenue
Glendale, Arizona 85301
(w/o enclosures)

Mr. Kenneth A. Schoech
Vice President of Business Development
PBC, Receivables Management Company
5295 DTC Parkway
Greenwood Village, Colorado 80111
(w/o enclosures)

Mr. Scott Maxam
Senior Associate
Valley Collection Service, LLC
7025 North 58th Avenue
Glendale, Arizona 85301
(w/o enclosures)

Ms. Maria S. Wacker
Vice President of Business Development
Government Services Division
Windham Professionals, Inc.
380 Main Street
Salem, New Hampshire 03079
(w/o enclosures)