



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 9, 2012

Ms. Vickie Berglund  
Records Management  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2012-05029

Dear Ms Berglund:

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# 450011.

The City of Missouri City (the "city") received a request for proposals submitted in response to request for proposals number 143-10 for Enterprise Resource Planning Software and Services. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of BUILDERadius, Inc. ("BUILDERadius"); CRW Systems ("CRW"); Innoprise Software, Inc. ("Innoprise"); MCCi, LLC ("MCCi"); Multiview Corporation ("Multiview"); New World Systems ("New World"); PDSI; Springbrook Software ("Springbrook"); and Tyler Technologies ("Tyler"). Accordingly, you state you notified BUILDERadius, CRW, Innoprise, MCCi, Multiview, New World, PDSI, Springbrook, and Tyler of the request for information and of their rights 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 MCCi. We have reviewed the submitted information and the submitted arguments.

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 BUILDERadius, CRW, Innoprise, Multiview, New World, PDSI, Springbrook, or Tyler explaining why the submitted information should not be released. Therefore, we have no basis to conclude BUILDERadius, CRW, Innoprise, Multiview, New World, PDSI, Springbrook, or Tyler 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 city may not withhold any portion of the submitted information on the basis of any proprietary interest BUILDERadius, CRW, Innoprise, Multiview, New World, PDSI, Springbrook, or Tyler may have in the information.

MCCi states portions of its information are excepted from disclosure under 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.<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 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). We note pricing information pertaining to a particular 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." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

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.*; *see also* ORD 661 at 5.

MCCi asserts portions of its information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude MCCi has established a *prima facie* case that some of its client information constitutes trade secret information. Therefore, the information we have marked must be withheld under section 552.110(a) of the Government Code. However, we note MCCi has made some of its client information publicly available on its website. Because MCCi has published this information, it has failed to demonstrate

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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).

how this information constitutes trade secret information for purposes of section 552.110(a). Moreover, we conclude MCCi has failed to establish a *prima facie* case that any portion of its remaining information meets the definition of a trade secret. We further find MCCi has not demonstrated the necessary factors to establish a trade secret claim for its remaining information. *See* ORD 402. Therefore, none of MCCi's remaining information may be withheld under section 552.110(a).

MCCi further argues portions of its information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find MCCi has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the city must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find MCCi has made only conclusory allegations that the release of any of its remaining information would result in substantial harm to its competitive position. *See* ORD 661. Accordingly, none of MCCi's remaining information may be withheld under section 552.110(b).

The submitted documents also include information that is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 provides, “[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 insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the materials at issue may be 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 marked under sections 552.110 and 552.136 of the Government Code. The remaining information must be released; however, any information that is subject to copyright may be released only in accordance with copyright law.

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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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 450011

Enc. Submitted documents

- c: Requestor  
(w/o enclosures)
- c: BUILDERadius, Inc.  
16 Biltmore Avenue, Suite 300  
Asheville, North Carolina 28801  
(w/o enclosures)
- c: CRW Systems  
16980 Via Tazon, Suite 320  
San Diego, California 92127  
(w/o enclosures)
- c: Innoprise Software, Inc.  
555 Eldorado Boulevard, Suite 100  
Brownfield, Colorado 80021  
(w/o enclosures)

- c: MCCI, LLC  
P.O. Box 2235  
Tallahassee, Florida 32316  
(w/o enclosures)
  
- c: Multiview Corporation  
220 Lowell Street, Suite A  
Pemberly, Massachusetts 01960  
(w/o enclosures)
  
- c: New World Systems  
888 West Big Beaver Road, Suite 600  
Troy, Michigan 48084  
(w/o enclosures)
  
- c: PDSI  
50 Corporate Park  
Irvine, California 92606  
(w/o enclosures)
  
- c: Springbrook Software  
111 Southwest Fifth Avenue, Suite 1850  
Portland, Oregon 97204  
(w/o enclosures)
  
- c: Tyler Technologies  
370 US Route One  
Falmouth, Maine 04105  
(w/o enclosures)