



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2012

Mr. Tyler Wallach  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2012-05692

Dear Mr. Wallach:

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# 451175 (Forth Worth PIR Nos. W014444, W014099, W014821, W015115, W015118).

The City of Fort Worth (the "city") received five requests for information related to the city's Request for Proposal No. 11-0027, including complete copies of submitted proposals, evaluation reports, score forms, reference responses, bid tabs, and award notices.<sup>1</sup> You state the city is releasing some of the responsive information to the requestors. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.136 of the Government Code. Additionally, you indicate the release of portions of the information at issue may implicate the proprietary interests of Aparc Systems, Inc.; Associated Time and Parking Controls; CALE America; Caracal Enterprises, LLC, d/b/a VenTek International; Global Parking Solutions USA; IPS Group, Inc.; Mitchell Time & Parking; Modern Access Systems, Inc.; Parkeon, Inc.; Robbins Parking Texas LP, d/b/a Platinum Parking; and SP Plus Municipal Services (collectively, the "third parties"). Accordingly, you notified the third parties of the request and of their right to submit

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<sup>1</sup>You inform us the city provided one requestor with an estimate of charges and a request for a deposit for payment of those charges on January 24, 2012. *See* Gov't Code § 552.2615, .263(a). You state the city received a deposit for payment of the anticipated costs on January 31, 2012. Thus, January 31, 2012 is the date on which the city is deemed to have received that request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date the governmental body receives deposit or bond).

arguments to this office as to why the requested 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 applicability of exception to disclosure under the Act in certain circumstances). We have received comments from a representative of Robbins Parking Texas LP, d/b/a Platinum Parking ("Robbins Parking"). We have considered the submitted arguments and reviewed the submitted information.

The city asserts that marked portions of the submitted information are confidential under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the city issued Request for Proposals No. 11-0027 (the "RFP") in March 2011. The RFP solicited vendors to submit proposals for Parking Pay and Display Stations, Credit Card Meter Mechanisms, or both. You state the city executed a contract with Parkeon, Inc. for the Pay and Display portion of the RFP on December 13, 2011. You state the city is currently negotiating a contract for the Credit Card Meter Mechanism portion of the RFP, but this contract has not yet been executed. You claim releasing the information marked under section 552.104, which pertains to the Credit Card Meter Mechanism portion of the RFP, will harm the city's negotiating position and would give an advantage to the other competitors and bidders if negotiations fail and the city issues a new RFP. Based on your representations and our review, we conclude the city has demonstrated the applicability of section 552.104 to the information at issue. Accordingly, we conclude the city may withhold the information marked under section 552.104 of the Government Code until such time as a contract has been executed for the Credit Card Meter Mechanism portion of the RFP.<sup>2</sup> *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

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*

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Robbins Parking. The remaining third parties have not submitted to this office any reasons explaining why their information should not be released. Thus, the remaining companies have not demonstrated any of their information is proprietary for purposes of the Act. *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, we conclude the city may not withhold any portion of the remaining information on the basis of any proprietary interest the remaining third parties may have in the information.

We understand Robbins Parking to claim section 552.110 of the Government Code in its arguments as to why portions of the requested information should not be released. Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and (2) “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 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 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>3</sup> Open Records Decision No. 552 at 5-6 (1990). However, we cannot conclude section 552.110(a) is applicable unless the party claiming this exception has shown the information at issue meets the definition of a trade secret and has demonstrated the necessary factors to establish a trade secret claim. See 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.*; 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).

Robbins Parking contends its entire proposal constitutes a trade secret. Upon review, we conclude Robbins Parking 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. However, we find Robbins Parking has demonstrated that release of portions of the submitted information would cause it substantial competitive injury. Therefore, the city must withhold the information we have marked under section 552.110(b) of the Government Code. We note both Robbins Parking and its affiliate, Digital Payment Technologies, have made some of their client information publicly available on their websites. Because they have published this information, the companies have failed to demonstrate how release of this information would cause them substantial competitive injury. Additionally, Robbins Parking has made only conclusory allegations that release of

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<sup>3</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 (1939); see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

its remaining information would result in substantial damage to its competitive position. Thus, Robbins Parking has not made the specific factual or evidentiary showing required by section 552.110(b) that substantial competitive injury would result from the release of any of the remaining information. *See* ORD 661 at 5-6, 509 at 5. Accordingly, the city may not withhold any of the remaining information under section 552.110(b) of the Government Code.

You state the insurance policy numbers you have marked are subject to section 552.136 of the Government Code. Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, 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, and includes an account number. *Id.* § 552.136(a). This office has concluded that an insurance policy number is an access device number for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Based on your representation and our review, we find the city must withhold the insurance policy numbers you 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 may withhold the information marked under section 552.104 of the Government Code until such time as a contract has been executed for the Credit Card Meter Mechanism portion of the RFP. The city must withhold the information we have marked under section 552.110(b) and the insurance policy numbers you have marked under section 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 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](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,



Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/em

Ref: ID# 451175

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)

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