



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 1, 2012

Ms. L. Renée Lowe  
Assistant County Attorney  
Harris County  
2525 Holly Hall, Suite 190  
Houston, Texas 77054

OR2012-08407

Dear Ms. Lowe:

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# 455270 (CA File No.12HSP0034).

The Harris County Hospital District (the “district”) received a request for copies of all submitted proposals and corresponding evaluation committee notes and individual scores pertaining to a specified request for proposals.<sup>1</sup> You state you have released some of the requested information to the requestor. Although you claim no exceptions to disclosure of the submitted information, you indicate its release may implicate the proprietary interests of Lone Star Interpreters, LLC; Morales Dimmick Translation Service, Inc. d/b/a MDtranslation; WorldWide Interpreters, Inc.; Universe Technical Translation, Inc. (“Universe”); CTS LanguageLink; CyraCom, LLC; SpectraCorp Technologies Group, Inc.; Interlingua International, Inc. d/b/a Interlingua USA; Language People, Inc. (“Language People”); Language Access Network, LLC; Interpreters Unlimited; Webbco Enterprises, LLC d/b/a Visual Communication Services (“Webbco”); Language Line Services, Inc.; and Pacific Interpreters. Accordingly, you notified these companies of the request and of their

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<sup>1</sup>You inform us the district provided the requestor with an estimate of charges and a request for a deposit for payment of those charges on March 21, 2012. *See* Gov’t Code §§ 552.2615, .263(a). You state the district received a deposit for payment of the anticipated costs on March 27, 2012. Thus, March 27, 2012 is the date on which the district is deemed to have received this 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).

right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 the circumstances). We have considered the submitted arguments and reviewed the submitted information.

An interested 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). We have received comments from Universe, Language People, and Webbco. However, as of the date of this letter, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude these remaining third parties have any protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 district may not withhold any portion of the information pertaining to the third parties that have not submitted comments to this office on the basis of any proprietary interest those third parties may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Webbco raises section 552.101 and cites to Open Records Decision No. 652 (1997). Open Records Decision No. 652 addressed under what circumstances the Texas Natural Resource Conservation Commission, which has been renamed the Texas Commission on Environmental Quality (the "commission"), must withhold from the public "trade secret" information pursuant to section 382.041 of the Health and Safety Code. *See* ORD 652 at 1 (addressing whether Health and Safety Code section 382.041 supplants common-law trade secret protection for certain information filed with the commission). Thus, we understand Webbco to assert its information is confidential under section 382.041. Section 382.041 provides in relevant part that "a member, employee, or agent of [the commission] may not disclose information submitted to [the commission] relating to secret processes or methods of manufacture or production that is identified as confidential when submitted." Health & Safety Code § 382.041(a). By its own terms, section 382.041 pertains only to information submitted to the commission. *See id.*; *see also* ORD 652 at 5. The proposals at issue in this request, however, were submitted to the district. Consequently, none of Webbco's information is made confidential by section 382.041 of the Health and Safety Code, and the district may not withhold it under section 552.101 on that basis.

Language People and Webbco each submit arguments against disclosure of their information under section 552.110 of the Government Code. Section 552.110 of the Government Code 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* Open Records Decision No. 552 at 2 (1990). 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 trade secret as well as the Restatement's list of six trade secret factors.<sup>2</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

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

law. *See* ORD 552 at 5. 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 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. *Id.*; *see also* 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).

Upon review of the arguments and submitted information, we find Webbco and Language People have failed to demonstrate that any of their respective information meets the definition of a trade secret, nor have either of these third parties demonstrated the necessary factors to establish a trade secret claim for its information. 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). Accordingly, none of Webbco’s or Language People’s information may be withheld under section 552.110(a) of the Government Code.

Upon review, we find Webbco has established its pricing information and client list, which we have marked, constitute commercial or financial information, the release of which would cause Webbco substantial competitive harm. Therefore, the district must withhold the information marked under section 552.110(b) of the Government Code. However, we find both Webbco and Language People have not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their remaining information would cause the companies substantial competitive harm. Accordingly, the district may not withhold any of Webbco’s or Language People’s remaining information under section 552.110(b) of the Government Code.

Webbco also raises section 552.131 of the Government Code for its bid proposal. Section 552.131 of the Government Code provides, in part, as follows:

- (a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

- (1) a trade secret of the business prospect; or
- (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 § 552.131(a). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). Because we have already disposed of Webbco's claim under section 552.110, the district may not withhold any of Webbco's information under section 552.131(a) of the Government Code. Furthermore, we note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the district does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the remaining information is excepted under section 552.131(b) of the Government Code.

You state you have redacted an insurance policy number pursuant to section 552.136(c) of the Government Code.<sup>3</sup> We note the remaining information contains additional insurance policy numbers. Section 552.136(b) of the Government Code states "[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). This office has determined an insurance policy number is an access device for purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

It appears some of the remaining information 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 district must withhold the information marked under sections 552.110 and 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright may only be released in accordance with copyright law.

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<sup>3</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Gov't Code § 552.136(d), (e).

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

Ref: ID# 455270

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

General Counsel's Office  
Lone Star Interpreters, LLC  
Suite 1400  
2700 Post Oak Boulevard  
Houston, Texas 77056  
(w/o enclosures)

General Counsel's Office  
WorldWide Interpreters, Inc.  
516 Missouri Street  
South Houston, Texas 77587  
(w/o enclosures)

General Counsel's Office  
Morales Dimmick  
Translation Service, Inc.  
1409 West South Slope Road  
Emmett, Idaho 83617  
(w/o enclosures)

Mr. Mark Krasnov  
Vice President  
Universe Technical Translation, Inc.  
9225 Katy Freeway, Suite 400  
Houston, Texas 77024  
(w/o enclosures)

General Counsel's Office  
CTS LanguageLink  
911 Main Street, Suite 10  
Vancouver, Washington 98660  
(w/o enclosures)

General Counsel's Office  
SpectraCorp Technologies  
Group, Inc.  
8131 LBJ Freeway, Suite 360  
Dallas, Texas 75251  
(w/o enclosures)

Ms. Brittany Aikens  
Executive Assistant  
Language People, Inc.  
38750 Sky Canyon Drive, Suite C  
Murrieta, California 92563  
(w/o enclosures)

General Counsel's Office  
Interpreters Unlimited  
Suite 203  
11199 Sorrento Valley Road  
San Diego, California 92121  
(w/o enclosures)

General Counsel's Office  
Language Line Services, Inc.  
Building Two  
One Lower Ragsdale Drive  
Monterey, California 93940  
(w/o enclosures)

General Counsel's Office  
CyraCom, LLC  
5780 North Swan Road  
Tucson, Arizona 85718  
(w/o enclosures)

General Counsel's Office  
Interlingua International, Inc.  
16300 Addison Road, Suite 222  
Addison, Texas 75001  
(w/o enclosures)

General Counsel's Office  
Language Access Network, LLC  
101 East Town Street, Suite 500  
Columbus, Ohio 43215  
(w/o enclosures)

Webbco Enterprises, LLC  
d/b/a Visual Communication Services  
c/o Mr. Christopher Gregg  
Gregg & Gregg, P.C.  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062  
(w/o enclosures)

General Counsel's Office  
Pacific Interpreters  
707 SW Washington Street, Suite 200  
Portland, Oregon 97205  
(w/o enclosures)