



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2012

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2012-12944

Dear Ms. Chaphekar:

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# 462173.

The Employees Retirement System of Texas ("ERS") received a request for the results of a dependent eligibility audit. You claim the requested information is excepted from disclosure under section 552.110 of the Government Code. You also believe the requested information may implicate the proprietary interests of Aon Hewitt ("Aon"). You inform us Aon was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We received arguments under section 552.110 from an attorney for Aon. We have considered all the submitted arguments and reviewed the information you submitted.

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

¹See 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).

obtained.” Gov’t Code § 552.110(a)-(b). This exception protects the proprietary interests of a third party such as Aon that has provided information to a governmental body, not the interests of the governmental body itself. Accordingly, we will consider only the arguments against disclosure we received from Aon.

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 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.² *See Open Records Decision No. 552 at 5 (1990)*. We cannot conclude section 552.110(a) is applicable, however, unless it has been shown the information meets the definition of a

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)*.

trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

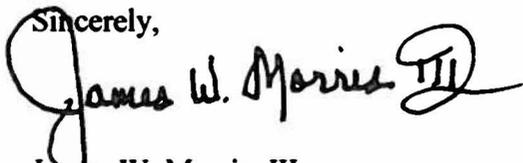
Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Aon contends marked portions of the submitted information constitute trade secrets of the company protected by section 552.110(a). Aon also contends the marked information is protected by section 552.110(b). Having considered Aon's arguments and supporting affidavit and reviewed the information at issue, we conclude ERS must withhold the information we have marked under section 552.110(b). We find Aon has not demonstrated any of the remaining information at issue constitutes a trade secret for purposes of section 552.110(a). *See* RESTATEMENT OF TORTS § 757 cmt. b; ORD 552 at 5, 402. We also find Aon 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 Aon substantial competitive harm. *See* ORD 661 at 5-6. We therefore conclude ERS may not withhold any of the remaining information under section 552.110 of the Government Code. Thus, as neither Aon nor ERS claims any other exception to disclosure, 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.

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,



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

JWM/bhf

Ref: ID# 462173

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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