



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2012

Mr. William Armstrong
District Office of Legal Services
Alamo Community College District
201 West Sheridan, Building C-8
San Antonio, Texas 78204-1429

OR2012-14675

Dear Mr. Armstrong:

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# 465022.

The Alamo Community College District (the "district") received a request for copies of the bid proposals submitted in response to CSP No. 12A-022 by bidders other than the requestor. You do not take a position as to whether the requested information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified the third parties of the district's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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 reviewed the submitted information and the arguments submitted by Global.

Initially, you state, and we agree, some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-11689 (2012). In that ruling, we determined the district must withhold certain

¹The third parties notified pursuant to section 552.305 are: EdFinancial Services, LLC ("EdFinancial"); Financial Aid Management for Education, Inc. ("FAME"); Global Financial Aid Services, Inc. ("Global"); ProEducation Solutions, LLC ("ProEducation"), which you inform us was awarded the contract at issue; The Kenaly Complement, Inc. ("Kenaly"); and University Financial Aid Solutions ("University").

information under section 552.110 and section 552.136 of the Government Code and must release the remaining information. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to the information we have marked, the district must continue to rely on Open Records Letter No. 2012-11689 as a previous determination and withhold or release that information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address the public availability of this information.

Global submits arguments against disclosure of its information 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. Gov't Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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) (citation omitted); *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.² See 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 exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. 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.* § 552.110(b); 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).

Global contends its pricing and future cost modeling information is commercial or financial information, release of which would cause substantial competitive harm to Global. Upon review of Global’s arguments under section 552.110(b), we conclude Global has established the release of its pricing information, which we have marked, would cause it substantial competitive injury. Accordingly, the district must withhold the information we have marked under section 552.110(b). However, we find that Global has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of Global’s remaining information would cause the company substantial competitive harm. See Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude that the district may not withhold any of the remaining information under section 552.110(b).

We understand Global to also argue its future cost modeling information constitutes a trade secret. Upon review, we find that Global has failed to demonstrate that the information for which it asserts section 552.110(a) meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information.

²There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; and
- (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).

Accordingly, the district may not withhold any of the information at issue on the basis of section 552.110(a).

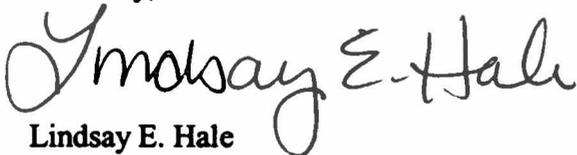
We note portions of the remaining information are subject to section 552.136 of the Government Code.³ Section 552.136 states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136.

In summary, the district must continue to rely on Open Records Letter No. 2012-11689 as a previous determination and withhold or release the information we have marked in accordance with that ruling. The district must withhold the information we have marked under section 552.110(b) of the Government Code and under section 552.136 of the Government Code. The district must release the remaining information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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³The 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).

Ref: ID# 465022

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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