



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2012

Mr. Humberto Aguilera
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-15117

Dear Mr. Aguilera:

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# 469262.

The San Antonio Independent School District (the "district"), which you represent, received a request for the winning proposal, evaluator notes, proposal scores, and other specified information pertaining to RFP 12-035 (RTI Reading Materials Services). You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, in correspondence to this office, Imagination Station, Inc. dba Istation ("Istation") asserts some of the requested information is excepted from disclosure under section 552.110 of the Government Code. *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 arguments and the submitted information.

Istation contends release of a portion of the submitted information could violate confidentiality agreements between Istation and certain third parties. However, the provisions of the Act cannot be overruled or repealed by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Thus, the district must release the submitted information unless it falls within the scope of an exception to disclosure,

notwithstanding any expectation or agreement to the contrary. See Open Records Decision No. 470 at 2 (1987).

Istation asserts some of its information is excepted from disclosure under section 552.110 of the Government Code, which protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” 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. 1958); 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.¹ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a private person’s claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude section 552.110(a) applies unless it has been shown the information meets the definition of a trade secret and the necessary factors

¹The following are the six factors that the Restatement gives 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; see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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

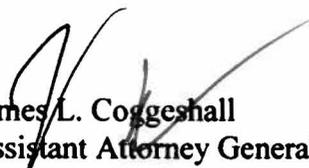
Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

Having considered Istation’s arguments and reviewed the information at issue, we find Istation has not shown the financial information it seeks to withhold meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See* Gov’t Code § 552.110(a). We also find Istation has made only conclusory allegations that release of the information at issue would cause the third party substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See id.* § 552.110(b). Therefore, the district may not withhold any of the information pursuant to section 552.110. Accordingly, the district must release the submitted information to the requestor.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 469262

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sandra K. Thomas
President and C.O.O.
The Imagination Station, Inc. dba Istation
2000 Campbell Center II
8150 North Central Expressway, Suite 2000
Dallas, Texas 75206
(w/o enclosures)

APR 10 2014

At 2:56p M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GN-12-003266

THE IMAGINATION STATION, INC.,	§	IN THE DISTRICT COURT
RICHARD H. COLLINS,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
GREG ABBOTT, in his official capacity as	§	419th JUDICIAL DISTRICT
Attorney General of the State of Texas, and	§	
the SAN ANTONIO INDEPENDENT	§	
SCHOOL DISTRICT,	§	
<i>Defendants.</i>	§	
	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiffs The Imagination Station, Inc. and Richard H. Collins, (Istation), Defendant the San Antonio Independent School District (SAISD), and Defendant Greg Abbott, Attorney General of Texas, (Attorney General) appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally resolved.

This is an action brought by Plaintiffs to challenge Letter Ruling OR2012-15117 and Letter Ruling OR2012-18585 (the "Rulings"). SAISD received requests from Curriculum Associates and Wireless Generation (the "Requestors") pursuant to the Public Information Act (the "PIA"), Tex. Gov't Code ch. 552, for certain documents submitted to SAISD by Istation. These documents contain information which Istation claims is confidential, proprietary, trade secret, and commercial and financial information exempt from disclosure under the PIA. SAISD requested a ruling from the Open Records Division of the Office of the Attorney General ("ORD"). ORD subsequently issued the Rulings, ordering the release of Istation's Information. SAISD holds the information that has been ordered to be disclosed.

The parties represented to the Court that: (1) pursuant to Tex. Gov't Code § 552.327(2) the Attorney General has determined and represents to the Court that both Requestors have in writing voluntarily withdrawn the requests for information, (2) in light of these withdrawals the lawsuit is now moot, and (3) pursuant to Tex. Gov't Code § 552.327(1) the parties agree to the dismissal of this cause.

IT IS THEREFORE ORDERED that:

1. Because the request of Curriculum Associates was withdrawn, no information should be released in reliance on Letter Ruling OR2012-15117. Letter Ruling OR2012-15117 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
2. Because the request of Wireless Generation k/n/a Amplify was withdrawn, no information should be released in reliance on Letter Ruling OR2012-18585. Letter Ruling OR2012-18585 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
3. All costs of court are taxed against the parties incurring same.
4. This cause is hereby DISMISSED without prejudice.

SIGNED on April 10, 2014.



JUDGE PRESIDING

AGREED:



WILLIAM S. RICHMOND
State Bar No. 24066800
brichmond@ghjhlaw.com
Gruber Hurst Johansen Hail Shank, LLP
G. MICHAEL GRUBER
State Bar No. 08555400
mgruber@ghjhlaw.com
1445 Ross Avenue, Suite 2500
Dallas, Texas 75202
Telephone: (214) 855-6800
Facsimile: (214) 855-6808

ATTORNEY FOR PLAINTIFFS



KIMBERLY L. FUCHS
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
Kimberly.Fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT ATTORNEY
GENERAL



DARIN DARBY
State Bar No. 05377900
PHILIP MARZEC
State Bar No. 13145570
Escamilla, Poneck & Cruz, LLP
700 North St. Mary's Street, Suite 850
San Antonio, TX 78205
Telephone: (210)225-0001
Facsimile: (210)225-0041
ddarby@epc-law.com

ATTORNEY FOR DEFENDANT SAN ANTONIO
INDEPENDENT SCHOOL DISTRICT

AGREED:

Attached

WILLIAM S. RICHMOND
State Bar No. 24066800
Gruber Hurst Johansen Hail Shank, LLP
1445 Ross Avenue, Suite 2500
Dallas, Texas 75202
Telephone: (214) 855-6800
Facsimile: (214) 855-6808
brichmond@ghjhlaw.com
G. MICHAEL GRUBER
State Bar No. 08555400
mgruber@ghjhlaw.com

ATTORNEY FOR PLAINTIFFS

Kimberly Fuchs

KIMBERLY L. FUCHS
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
Kimberly.Fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT ATTORNEY
GENERAL

Darin Darby

DARIN DARBY
State Bar No. 05377900
PHILIP MARZEC
State Bar No. 13145570
Escamilla, Poneck & Cruz, LLP
700 North St. Mary's Street, Suite 850
San Antonio, TX 78205
Telephone: (210)225-0001
Facsimile: (210)225-0041
ddarby@epc-law.com

ATTORNEY FOR DEFENDANT SAN ANTONIO
INDEPENDENT SCHOOL DISTRICT