



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2012

Ms. Sharon Alexander  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2012-15506

Dear Ms. Alexander:

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# 466529.

The Texas Department of Transportation (the "department") received eight requests for information concerning RFP# B442012016858000, including the winning bids, pricing information, and bid tabulations. You state the department will redact social security numbers under section 552.147 of the Government Code.<sup>1</sup> Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified AAR, Inc. ("AAR"); Alamo 1; Allstate Services, Ltd. ("Allstate"); ARC Abatement, Inc. ("ARC"); Border Demolition and Environmental, Inc. ("Border"); Cactus Abatement & Demo ("Cactus"); Cherry Demolition ("Cherry"); EDRS, Inc. ("EDRS"); Empire Environmental ("Empire"); F. Hall Mowing ("Hall"); Garrett Demolition, Inc. ("Garrett"); Hunter Demolition & Wire ("Hunter"); Inland Environments ("Inland"); Intercon Construction ("Intercon"); J.T.B. Services, Inc. ("J.T.B."); Lindamood Demolition ("Lindamood"); RNDI Companies, Inc. ("RNDI"); Robles & Sons, Inc. ("Robles"); Tetra Tech, Inc. ("Tetra"); and USA Environment, L.P. ("USA") of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by ARC and Tetra. Thus, we have considered their arguments and reviewed the submitted information.

---

<sup>1</sup>Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Initially, we note you have not submitted information responsive to the request for the winning bids. To the extent such information existed on the date the department received the request, we presume you have released it. If not, the department must do so at this time. *See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).*

Next, we note Tetra seeks to withhold information the department has not submitted for our review. This ruling does not address information beyond what the department has submitted to us for our review. *See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested).* Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information. *See id.*

Next, we note an interested third 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).* As of the date of this letter, we have not received arguments from AAR, Alamo 1, Allstate, Border, Cactus, Cherry, EDRS, Empire, Hall, Garrett, Hunter, Inland, Intercon, J.T.B., Lindamood, RNDI, Robles, and USA. Thus, none of these third parties has demonstrated it has a protected proprietary interest in any of 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 department may not withhold the submitted information on the basis of any proprietary interests they may have in the information.

Tetra states it submitted the information at issue to the department with the expectation that it would not be publicly released. However, information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110).* Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

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, 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 . . . . 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 776 (Tex. 1958). 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> 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 law. See Open Records Decision No. 552 at 5 (1990). 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).

---

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

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. *See id.*; *see also* ORD 661.

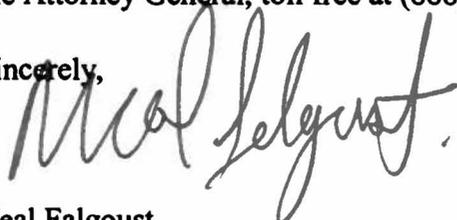
ARC generally asserts its information is a trade secret. However, upon review, we find ARC has not demonstrated any of the submitted information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim. *See* RESTATEMENT OF TORTS § 757 cmt. b, ORD 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim). Accordingly, the department may not withhold any of ARC’s information under section 552.110(a) of the Government Code.

Tetra asserts section 552.110(b) for some of its information. Upon review, we find Tetra has demonstrated the pricing information we have marked consists of commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold the information we have marked under section 552.110(b) of the Government Code. However, Tetra has not demonstrated any of the remaining information consists of commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department may not withhold any of the remaining information under section 552.110(b) of the Government Code. As no other exceptions are raised, the remaining 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 466529

Enc. Submitted documents

c: 8 Requestors  
(w/o enclosures)

EDRS, Inc.  
101 South Coit Road, Building 36, Suite  
297  
Richardson, Texas 75080  
(w/o enclosures)

Alamo 1  
10843 Gulfdale Street  
San Antonio, Texas 78216  
(w/o enclosures)

RNDI Companies, Inc.  
2255 Ridge Road, Suite 216  
Rockwall, Texas 75087  
(w/o enclosures)

Empire Environmental  
11405 Molly Mac Drive  
Balch Springs, Texas 75180  
(w/o enclosures)

Garrett Demolition, Inc.  
P.O. Box 633  
Burleson, Texas 76097  
(w/o enclosures)

Cactus Abatement & Demo  
4201 North Main Street, Suite 228  
Fort Worth, Texas 76106  
(w/o enclosures)

Robles & Sons Inc  
750 North Main  
Cibolo, Texas 78108  
(w/o enclosures)

Hunter Demolition & Wire  
P.O. Box 786  
Poteet, Texas 78065  
(w/o enclosures)

ARC Abatement Inc  
300 South 2<sup>nd</sup> Street  
Waco, Texas 76701  
(w/o enclosures)

Allstate Services LTD  
13201 FM 812  
Del Valle, Texas 78617  
(w/o enclosures)

Border Demolition and Environmental,  
Inc.  
1004 Diesel Drive  
El Paso, Texas 79907  
(w/o enclosures)

Lindamood Demolition  
2020 South Nursery Road  
Irving, Texas 75060  
(w/o enclosures)

Intercon Construction  
301 West Avenue D  
Garland, Texas 75040  
(w/o enclosures)

Cherry Demolition  
6131 Selinsky  
Houston, Texas 77048  
(w/o enclosures)

AAR Incorporated  
6640 Signat Drive  
Houston, Texas 77041  
(w/o enclosures)

J.T.B. Services, Inc.  
9026 Lambright  
Houston, Texas 77075  
(w/o enclosures)

Inland Environments  
P.O. Box 6751  
Kingwood, Texas 77325  
(w/o enclosures)

USA Environment LP  
10234 Lucore Street  
Houston, Texas 77017  
(w/o enclosures)

Tetra Tech Inc  
2901 Wilcrest Drive, Suite 405  
Houston, Texas 77042  
(w/o enclosures)

F. Hall Mowing  
P.O. Box 271101  
Dallas, Texas 75227  
(w/o enclosures)