



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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

October 31, 2012

Ms. Lisa Ayers
Paralegal
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

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

OR2012-17377

Dear Ms. Ayers:

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# 469424.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for all request for proposal responses and the contract for a specified coding services purchase. You state the district has released the requested contract. Although you take no position on the public availability of the submitted information, you state some of the information at issue may implicate the interests of ACS Healthcare Solutions ("ACS"), CodeRyte, Inc. ("CodeRyte"), Dolbey Systems ("Dolbey"), MedQuist Transcriptions Ltd. ("MedQuist"), and OptumInsight. Accordingly, you notified these companies of the requests for information and of their right to submit arguments to this office as to why the information at issue 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 certain circumstances). We have received comments from an attorney for CodeRyte. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district failed to comply with the procedural requirements of section 552.301 of the Government Code. See Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with

section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from ACS, Dolbey, MedQuist, or OptumInsight explaining why any of their requested information should not be released. Therefore, we have no basis to conclude these companies have protected proprietary interests in the requested information. *See id.* § 552.110; 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. Consequently, the district may not withhold any of the requested information on the basis of proprietary interests these companies may have in the information.

Next, we note CodeRyte seeks to withhold information the district has not submitted for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

CodeRyte claims portions of its information at issue are excepted from disclosure under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision,” and (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.” *Id.* § 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 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 . . . 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 763, 776 (Tex. 1958). This office will accept a private person's claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See Open Records Decision No. 552 at 5 (1990)*. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.¹ *Open Records Decision No. 402 (1983)*.

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 information at issue. Gov't Code § 552.110(b); *Open Records Decision No. 661 at 5-6 (1999)*.

¹The 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 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 (1939); *see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980)*.

CodeRyte claims certain information relating to its CodeAssist software constitutes trade secrets under section 552.110(a). Upon review, however, we find CodeRyte has not demonstrated how this information meets the definition of a trade secret. *See* RESTATEMENT OF TORTS § 757 cmt. b (1939) (trade secret “is not simply information as to single or ephemeral events in the conduct of the business”); Open Records Decision Nos. 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), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the district may not withhold any of CodeRyte’s information at issue under section 552.110(a) of the Government Code.

CodeRyte argues portions of its information at issue constitutes commercial and financial information that, if released, would cause the company substantial competitive harm. Upon review, we find CodeRyte has made only conclusory allegations that the release of the information at issue would result in substantial harm to its competitive position. *See generally* Open Records Decision Nos. 661, 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the district may not withhold any of the information at issue under section 552.110(b) of the Government Code.

We note that portions of the submitted information 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. As no further exceptions to disclosure have been raised, the submitted information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 469424

Enc. Submitted documents

c: Caitlin
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2000 McKinney Ave., Ste. 1900
Dallas, Texas 75201-1858
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Mr. Chris Casto
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7820 Auburn Road
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MedQuist Transcriptions Ltd.
9009 Carothers Parkway, Ste. C-3
Franklin, Tennessee 37067
(w/o enclosures)

OptumInsight
12125 Technology Drive
Eden Prairie, MN 55344
(w/o enclosures)

SC FEB 10 2016
At 1:50 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-003749

3M HEALTH INFORMATION SYSTEMS, INC.,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	98th JUDICIAL DISTRICT
	§	
THE HONORABLE GREG ABBOTT, ATTORNEY GENERAL OF THE STATE OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

AGREED ORDER OF DISMISSAL

This is an action brought under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff 3M Health Information Systems, Inc., and Defendant Ken Paxton, Attorney General of Texas,¹ agree this matter should be dismissed pursuant to Tex. Gov't Code § 552.327. A court may dismiss a PIA suit pursuant to section 552.327 when the parties agree to the dismissal and the Attorney General represents to the Court that the requestor has voluntarily withdrawn the request or has abandoned the request. The Attorney General has determined the underlying PIA request that gave rise to this lawsuit has been abandoned. Accordingly, the parties request that the Court enter this Agreed Order of Dismissal. The Court agrees entry of this order is appropriate.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that Plaintiff's cause of action against Defendant is dismissed in all respects;

All relief not expressly granted is denied; and

This Order disposes of all claims between the parties as final.

Signed this 10th day of February, 2016.



JUDGE PRESIDING

¹ Greg Abbott was named defendant in his official capacity as Texas Attorney General. Ken Paxton became Texas Attorney General on January 5, 2015, and is now the appropriate defendant in this cause.



JUDGE PRESIDING

AGREED:



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