



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2012

Ms. Katinka Howell
Assistant City Attorney
Department of Aviation
City of San Antonio
9800 Airport Boulevard
San Antonio, Texas 78216-9990

OR2012-20448

Dear Ms. Howell:

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# 474494 (COSA File No. W010733-100512).

The City of San Antonio (the "city") received a request for information submitted by firms for a specified request for proposals ("RFP") related to parking revenue equipment. You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified CTR Systems Parking, Inc. ("CTR"), Associated Time and Parking Controls ("Associated"), and ECCL 4:12, LLC d/b/a/ Pro Tech Access ("Pro Tech") of the city'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. *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). In correspondence to this office, CTR objects to the release of some of its information under section 552.110 of the Government Code. We have reviewed the submitted arguments and information.

Initially, you inform us the requestor agreed to narrow the request to exclude company financial information, client lists, tax identification numbers, social security numbers, insurance certificate and policy numbers, proposal bond and bond numbers, and discretionary contracts disclosure forms. *See* Gov't Code § 552.222. Thus, these types of information within the submitted documents are not responsive to the request for information. This

ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Associated nor Pro Tech has submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding any portion of the submitted information constitutes proprietary information of these third parties, and the city may not withhold any portion of the submitted information on that basis. *See* 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, 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.

CTR asserts some of its information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 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. Gov't Code § 552.110. 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 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.” Gov’t Code § 552.110(b). 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* ORD 661 at 5-6 (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

Having considered CTR’s arguments and reviewed the information at issue, we find CTR has not shown any of the submitted information 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 CTR 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 city may not withhold any of the information pursuant to section 552.110.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern

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).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82.

The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See Open Records Decision Nos.* 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find some of the submitted information consists of personal financial information. We are unable to determine whether this information pertains to an actual living individual or a fictitious individual created as a sample for purposes of responding to the RFP at issue. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy if it pertains to an actual living individual. To the extent this information does not pertain to an actual living individual, it is not private and the city may not withhold it under section 552.101 on that basis.

Some of the submitted information may also be subject to section 552.130 of the Government Code. Section 552.130(a)(2) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

...

(2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]

Gov't Code § 552.130(a)(2). We have marked information the city must withhold under section 552.130 if it pertains to actual living individuals and relates to motor vehicle titles or registrations issued by an agency of this state or another state or country. *Id.* However, the city may not withhold this information under section 552.130 if it neither pertains to actual living individuals nor relates to an motor vehicle titles or registrations issued by an agency of this state or another state or country.

The submitted information also contains credit card numbers that may be excepted from disclosure under section 552.136 of the Government Code, which provides in part the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) 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.

Id. § 552.136(a)-(b). The city must withhold the information we have marked under section 552.136 if it pertains to actual living individuals and consists of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* § 552.136(a). However, the city may not withhold the information on that ground if neither pertains to actual living individuals nor consists of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds.

Finally, we note some of the materials at issue 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.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy if it pertains to an actual living individual; however, the city may not withhold the information on that ground if it does not pertain to an actual living individual. The city must withhold the information we have marked under section 552.130 of the Government Code if it pertains to actual living individuals and relates to motor vehicle titles or registrations issued by an agency of this state or another state or country; however, the city may not withhold this information under section 552.130 if it neither pertains to actual living individuals nor relates to an motor vehicle titles or registrations issued by an agency of this state or another state or country. The city must withhold the information we have marked under section 552.136 of the Government Code if it pertains to actual living individuals and consists of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the

transfer of funds; however, the city may not withhold the information on that ground if neither pertains to actual living individuals nor consists of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. The city must release the remaining information but may only release any copyrighted information 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 474494

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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