



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2013

Ms. LeAnne Lundy
Counsel for the Fort Bend Independent School District
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OR2013-02363

Dear Ms. Lundy:

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# 478475.

The Fort Bend Independent School District (the "district"), which you represent, received a request for specified information pertaining to RFQ13-019ML. You indicate the district will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you inform us release of this information may implicate the proprietary interests of Belt, Harris, Pechacek ("BHP"); Gibson Consulting Group; Pannell, Kerr & Forester; and Weaver. Accordingly, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d)*; *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from BHP. We have considered the submitted arguments and reviewed the submitted information.

We note 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, only BHP has submitted comments to this office explaining why its information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted 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. Accordingly, the district may not withhold any portion of the information it submitted for our review based upon the proprietary interests of the remaining third parties.

BHP raises section 552.110(a) of the Government Code for some of its information. 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. 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.” Gov’t Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* ORD 552 at 2. Section 757 provides 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 *See* RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept

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

a private person's claim for exception as valid under section 552.110 if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. See 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).

BHP argues that portions of its information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we find BHP has established that some of its customer information constitutes trade secrets. Therefore, the district must withhold this information, which we have marked, under section 552.110(a) of the Government Code. We note, however, BHP has published the identities of most of its clients on its website. In light of the publication of such information, we cannot conclude the identities of these published clients qualify as trade secrets. Furthermore, we conclude BHP has not demonstrated how any of the remaining information it seeks to withhold meets the definition of a trade secret, nor has BHP demonstrated the necessary factors to establish a trade secret claim. See RESTATEMENT OF TORTS § 757 cmt. b, 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 (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). Therefore, the district may not withhold any of the remaining information under section 552.110(a).

We note portions of the remaining information are subject to sections 552.130 and 552.136 of the Government Code.² Section 552.130(a)(2) of the Government Code excepts from disclosure information related to "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). Accordingly, the district must withhold the vehicle identification number we have marked under section 552.130(a)(2) of the Government Code.

Section 552.136 of the Government Code provides in part that "[n]otwithstanding 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." See *id.* § 552.136(b); see also *id.* § 552.136(a) (defining "access device"). This office has determined that insurance policy numbers are subject to section 552.136. See Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the district must withhold the information we have marked under sections 552.110(a), 552.130(a)(2), and 552.136 of the Government Code. As no further

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

exceptions to disclosure are raised for the remaining information, the district must release it.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 478475

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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