



**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

June 14, 2013

Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

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

OR2013-10103

Dear Ms. Angadicheril:

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# 490767 (U.T. OGC# 149129).

The University of Texas System (the "system") received a request for "a copy of the proposal and finalized rates/pricing schedule[s]" of two named companies for a specified request for proposals. Although the system takes no position with respect to the requested information, you state its release may implicate the interests of Enterprise Holdings, Inc. ("Enterprise") and The Hertz Corporation ("Hertz"). Accordingly, you state, and provide documentation demonstrating, the district notified Enterprise and Hertz of the request for information and of their right to submit arguments stating 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); 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 reviewed the submitted information and the arguments submitted by counsel for Enterprise.

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) of the Government Code 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, this office has

not received comments from Hertz explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate Hertz's interests. *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, we conclude the system may not withhold any of the submitted information on the basis of any interest Hertz may have in the information.

Enterprise submits arguments against disclosure of its information under section 552.110 of the Government Code. Section 552.110 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. Gov't Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is 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. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* ORD 552 at 2. Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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) (citation omitted); *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.<sup>1</sup> See RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is exempted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. 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).

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. *Id.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Enterprise argues some of its information constitutes trade secrets. We note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is “simply information as to single or ephemeral events in the conduct of the business,” rather than “a process or device for continuous use in the operation of the business.” RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776. Upon review, we find Enterprise has failed to demonstrate that the information for which it asserts section 552.110(a) meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the system may not withhold the information at issue on the basis of section 552.110(a).

Enterprise also contends portions of the submitted information are commercial or financial information, the release of which would cause the company substantial competitive harm.

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<sup>1</sup>There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- and
- (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).

Upon review of Enterprise's arguments under section 552.110(b), we conclude Enterprise has established the release of some of its information, which we have marked, would cause it substantial competitive injury. Accordingly, the system must withhold the information we have marked under section 552.110(b). We note, however, Enterprise has published the identity of one of its customers on its website, making this information publically available. As such, the system may not withhold this information under section 552.110(b). We find Enterprise has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining information would cause the company substantial competitive harm. *See* Open Records Decision Nos. 509 at 5 (1988) (because 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) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We note the pricing information of winning bidders of a government contract, such as Enterprise, is generally not excepted under section 552.110(b). Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see also* ORD 319 at 3. *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards, and note the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3); ORD 514. We therefore conclude the system may not withhold any of the remaining information under section 552.110(b).

We note some of the remaining information appears to be subject to copyright law. 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.

In summary, the system must withhold the information we have marked under section 552.110(b) of the Government Code. The system must release the remaining information; however, any information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 490767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Lauren Morgan Fincher  
Counsel for Enterprise Holdings, Inc.  
Locke Lord, L.L.P.  
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(w/o enclosures)

Mr. Mark Floyd  
Account Representative  
The Hertz Corporation  
225 Brae Boulevard  
Park Ridge, New Jersey 07656  
(w/o enclosures)

SC JAN 22 2016  
At 3:00 P.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-13-002359

ENTERPRISE HOLDINGS, INC.,  
*Plaintiff,*

v.

THE HONORABLE GREG ABBOTT,  
Attorney General of Texas, AND THE  
UNIVERSITY OF TEXAS SYSTEM,  
*Defendants.*

§ IN THE DISTRICT COURT OF  
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§ 261st JUDICIAL DISTRICT  
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§ TRAVIS COUNTY, TEXAS

**AGREED ORDER OF DISMISSAL WITHOUT PREJUDICE**

On this date, the Court heard the parties' motion for agreed order of dismissal without prejudice. Plaintiff Enterprise Holdings, Inc. (Enterprise) and Defendants the University of Texas System (the University) and Ken Paxton, Attorney General of Texas (the 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 Plaintiff Enterprise to challenge Letter Ruling OR2013-10103 (the "Ruling"). The University received a request from Avis/Budget (the "Requestor") pursuant to the Public Information Act (the "PIA"), Tex. Gov't Code ch. 552, for certain bid proposals and finalized rates/pricing schedules involving Enterprise. These documents contain information Enterprise contends is confidential, proprietary, trade secret, and commercial and financial information exempt from disclosure under the PIA. The University requested a ruling from the Open Records Division of the Office of the Attorney General ("ORD"). ORD subsequently issued the Ruling, ordering the release of portions of the requested information, including a portion of the information that Enterprise contends is protected from disclosure (the "Enterprise Contested Information"). The University holds the information that has been ordered to be disclosed.



The parties have now 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 the Requestor has in writing voluntarily withdrawn its request and (2) in light of this withdrawal and 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 has been withdrawn, the University shall not release the Enterprise Contested Information, or any portion thereof, in reliance on Letter Ruling OR2013-10103. As it relates to the Enterprise Contested Information, Letter Ruling OR2013-10103 shall 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: Pursuant to Tex. Gov't Code § 552.301(g), as it relates to the Enterprise Contested Information, the University shall not rely upon Letter Ruling OR2013-10103 as a prior determination under Tex. Gov't Code § 552.301(f) nor shall it release any Enterprise Information in reliance on said Ruling, and if the University receives any future requests for the same or similar Enterprise Contested Information it must request a new decision from the Office of the Attorney General, which shall review the request without reference to Letter Ruling OR2013-10103.
3. All costs of court are taxed against the parties incurring same.
4. This cause is hereby DISMISSED without prejudice. Nothing herein shall limit Enterprise's right to argue in the future that the Enterprise Contested Information is confidential, proprietary, trade secret, and commercial and financial information, and not subject to disclosure under the PIA.

SIGNED on January 22, 2016



AGREED:



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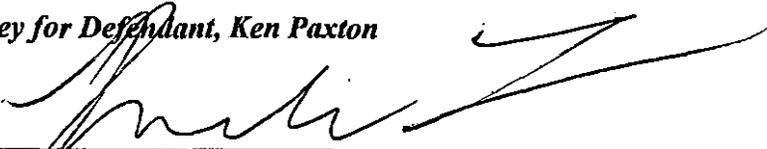
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*Attorney for Defendant, The University of Texas System*

SC JAN 22 2016  
At 3:00 P.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-13-002359

ENTERPRISE HOLDINGS, INC.,  
*Plaintiff,*

v.

THE HONORABLE GREG ABBOTT,  
Attorney General of Texas, AND THE  
UNIVERSITY OF TEXAS SYSTEM,  
*Defendants.*

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§ TRAVIS COUNTY, TEXAS

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SIGNED on January 22, 2016



AGREED:



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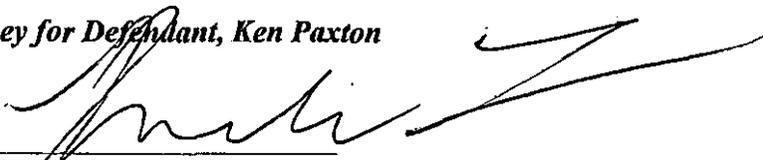
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