



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2013

Mr. Kyle G. Heath Ed.D.  
Mansfield Independent School District  
605 East Broad Street  
Mansfield, Texas 76063

OR2013-10261

Dear Mr. Heath:

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# 490888.

The Mansfield Independent School District (the "district") received a request for parts A and B of the proposal submitted by Paragon Sports Construction ("Paragon") for the RL Anderson Stadium Turf Replacement, including full financial statements. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of the requested information may implicate the proprietary interests of Paragon. Accordingly, you state and provide documentation showing, you have notified Paragon of the request for information and of its right to submit arguments to this office as to why the requested 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) (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 the circumstances). We have received comments from Paragon. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district only submitted Paragon's financial information. To the extent information responsive to the rest of the request existed at the time the district received the request for information, we assume the district has released it to the requestor. If not, then

the district must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Next, we note Paragon argues against the release of insurance information that was not submitted by the district. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted as responsive for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

The district raises section 552.110 of the Government Code. We note section 552.110 is designed to protect the interests of third parties, such as Paragon, not the interests of a governmental body. Thus, we do not address the district's arguments under section 552.110 of the Government Code, and the information at issue may only be withheld under section 552.110 based only on arguments from Paragon. Paragon seeks to withhold its balance sheet and income statement 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. *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>1</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 ORD 552 at 5. 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. 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.*; see also ORD 661 at 5.

Paragon explains the submitted information constitutes commercial information that, if released, would cause the company substantial competitive harm. After reviewing the submitted arguments and the information at issue, we find Paragon has established that release of its balance sheet and income statement would cause the company substantial competitive injury. Therefore, we find the district must withhold the submitted information under section 552.110(b) of the Government Code.<sup>2</sup>

In summary, the district must withhold the submitted information under section 552.110(b) of the Government Code.

---

<sup>1</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.

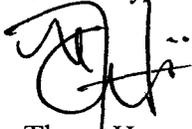
RESTATEMENT OF TORTS § 757 cmt. b; see Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



Thanah Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 490888

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Michael D. Marin  
Attorney for Paragon Sports  
Boulette & Golden LLP  
2801 Via Fortuna Drive, Suite 530  
Austin, Texas 78746  
(w/o enclosures)