



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2013

Ms. Elaine Nicholson  
Assistant City Attorney  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2013-14725A

Dear Ms. Nicholson:

This office issued Open Records Letter No. 2013-14725 (2013) on August 22, 2013. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on August 22, 2013. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 504928.

The City of Austin (the "city") received a request for the winning bid submitted by ARAG Insurance Co. ("ARAG") for Group Legal Plan Services for the city. Although you take no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of ARAG. Accordingly, you state and provide documentation showing, you have notified ARAG 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 ARAG. We have considered the submitted arguments and reviewed the submitted information.

ARAG states some of its information is subject to a confidentiality agreement and was submitted with the expectation of confidentiality. ARAG asserts the city should withhold this information as confidential. However, information is not confidential under the Act

simply because the party that submits the information anticipates or requests it be kept confidential. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 of the Government Code). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.110(a) of the Government Code protects trade secrets. Gov’t Code § 552.110(a). Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. See *id.* § 552.110(a). 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 [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; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978). 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

---

<sup>1</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

excepted 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 2. 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) of the Government Code 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* Open Records Decision No. 661 at 5 (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).

ARAG asserts its attorney network list and pricing document, including the Ultimate Advisor Assumptions information, are excepted from public disclosure under section 552.110 of the Government Code. ARAG argues its methodology and assumptions are utilized by ARAG’s underwriting staff to determine pricing for a specified group. ARAG asserts this “established process to determine pricing for prospective groups is in continuous use by its underwriting staff.” However, ARAG also states the “exact value of methodology and assumptions varies based upon specific sales prospect information.” Upon review, we determine ARAG has failed to demonstrate that any portion of the submitted information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORDs 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 2 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing are not ordinarily excepted under statutory predecessor to section 552.110). We note ARAG was awarded the contract to which the information at issue pertains. Pricing information pertaining to a particular contract with a governmental body is generally not a trade secret under section 552.110(a)

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

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 Huffines*, 314 S.W.2d at 776; ORDs. 319 at 2, 306 at 2. Accordingly, the city may not withhold any of the submitted information on the basis of section 552.110(a) of the Government Code.

Upon further review, we find ARAG has made only conclusory allegations that the release of any of the submitted information would result in substantial damage to its competitive position. As noted above, ARAG was awarded the contract to which the information at issue pertains. Although ARAG seeks to withhold the submitted pricing document, the pricing information relates to a specified contract. This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Thus, ARAG has not demonstrated that substantial competitive injury would result from the release of any of the submitted information. *See* ORD 661 at 5. Accordingly, none of the submitted information may be withheld under section 552.110(b) of the Government Code. As no further arguments against disclosure have been made, the submitted information must be released.

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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/tch

Ref: ID# 504928

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Ann Cosimano  
General Counsel  
ARAG Services, L.L.C.  
400 Locust, Suite 480  
Des Moines, Iowa 50309  
(w/o enclosures)