ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2013

Mr. Michael Bostic
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-17478

Dear Mr. Bostic:

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# 501571.

The City of Dallas (the "city") received a request for information relating to the request for proposals for the Dallas Municipal Court Case Management System. You state the city will release some information with redactions made pursuant to Open Records Decision No. 684 (2009).[1] You claim that some the submitted information is excepted from disclosure under section 552.139 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of American Cadastre, LLC, dba AMCAD ("AMCAD"); Aptitude Solutions ("Aptitude"); CourtView Justice Solutions ("CourtView"); Crowe Horwath LLP ("Crowe"); Professional Computer Software System, Inc. ("PCSS"); Sustain Technologies, Inc. ("Sustain"); Tyler Technologies ("Tyler"), Inc.; and Unisys Corporation ("Unisys"). Accordingly, you state, and provide documentation showing, you notified these companies 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.

[1]Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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 the Act in certain circumstances). We have received correspondence from AMCAD, Crowe, Sustain, and Tyler. We have considered the submitted arguments and reviewed the submitted information.

Section 552.139(a) of the Government Code provides:

> (a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). You state the information you have marked consists of information related to the design, operation, and defense of the city's computer network. You further state the information at issue illustrates "components of the city's network and how it relates to network and data security." Based on your representations and our review, we find you have demonstrated the information at issue relates to computer network security, and the design, operation, or defense of the city's computer network. Accordingly, the city must withhold the information you have marked under section 552.139 of the Government Code.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Aptitude, CourtView, PCSS, Sustain, and Unisys explaining why their information should not be released. Therefore, we have no basis to conclude Aptitude, CourtView, PCSS, Sustain, or Unisys 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 city may not withhold any of the information at issue on the basis of any proprietary interest Aptitude, CourtView, PCSS, Sustain, or Unisys may have in it.

We understand Crowe to assert portions of its information are protected by common-law privacy. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the

public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we find Crowe has failed to demonstrate any of its information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

AMCAD, Crowe, and Tyler raise section 552.110 of the Government Code for portions of their submitted information. Section 552.110 of the Government Code 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 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. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *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.[2] RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

AMCAD, Crowe, and Tyler assert portions of their information constitute trade secrets. Upon review, we find Tyler has demonstrated some of its information, which we have marked, constitutes trade secrets of the company. Accordingly, the city must withhold the information we have marked under section 552.110(a) of the Government Code. However, we find AMCAD and Crowe have failed to demonstrate how any portion of their information at issue meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim. *See* 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 2 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). We further note pricing

---

[2]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 also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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." *See* RESTATEMENT OF TORTS § 757 cmt. b; *Huffines*, 314 S.W.2d at 776; ORDs 319 at 3, 306 at 3. Accordingly, the city may not withhold any portion of the remaining information under section 552.110(a) of the Government Code.

AMCAD and Crowe claim portions of their information are subject to section 552.110(b) of the Government Code. Upon review, we find AMCAD has established release of its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Thus, the city must withhold the information we have marked under section 552.110(b) of the Government Code. However, AMCAD and Crowe have made only conclusory allegations release of any of the remaining information they seek to withhold would result in substantial competitive injury. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, we find none of the remaining information at issue may be withheld under section 552.110(b) of the Government Code.

AMCAD also claims some of its submitted information is subject to section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

> (a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:
>
> > (1) a trade secret of the business prospect; or
> >
> > (2) commercial 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.
>
> (b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). Because we have already disposed of AMCAD's claims for the information at issue under section 552.110, the city may not withhold any of that information under section 552.131(a) of the Government Code. We note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the city does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the submitted information is excepted under section 552.131(b) of the Government Code.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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."[3] *Id.* § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the city must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

We note some of the remaining information appears to 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.

In summary, the city must withhold the information you have marked under section 552.139 of the Government Code. The city must withhold the information we have marked under sections 552.110 and 552.136 of the Government Code. The remaining information must be released; however, any information subject to copyright law 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.

---

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

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, 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,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 501571

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael B. Battaglia
Senior Vice President
American Cadastre, L.L.C.
Suite 400
13650 Dulles Technology Drive
Herndon, Virginia 20171
(w/o enclosures)

Mr. Brett J. Rodda
Counsel for Sustain Technologies, Inc.
Munger, Tolles & Olson, L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
(w/o enclosures)

Mr. Wade Riley
Contracts Specialist
Tyler Technologies, Inc.
5949 Sherry Lane, Suite 1400
Dallas, Texas 75225
(w/o enclosures)

Mr. Stephen J. Keeley
Crowe Horwath, L.L.P.
P.O. Box 3697
Oak Brook, Illinois 60522-3697
(w/o enclosures)

Mr. Brian Nederhoff
Regional Managing Partner
Unisys Corporation
Suite 140-255
6435 North Garland Avenue
Garland, Texas 75040
(w/o enclosures)

Ms. Tracy Ownbey
Professional Computer Software System, Inc.
6300 Ridglea Place, Suite 1104
Fort Worth, Texas 76116
(w/o enclosures)

Mr. Tim Nemethy
Vice President, Sales
Aptitude Solutions
851 Trafalgar Court, Suite 160W
Maitland, Florida 32751
(w/o enclosures)

Ms. Sue Humphreys
Director, Product Management
CourtView Justice Solutions
5399 Lauby Road Northwest
North Canton, Ohio 44720
(w/o enclosures)