



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2014-02559

Dear Ms. Winn:

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# 513841.

The Travis County Purchasing Office (the "county") received a request for information pertaining to request for proposals number 1211-005-LC. You state the county will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Commercial Security Integration, Inc. ("CSI"), and 911 Security Cameras Inc. ("911"). Accordingly, you state, and provide documentation showing, you notified CSI and 911 of the request for information and of the right of each 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 the Act in certain circumstances). We have received correspondence from 911. We have reviewed the submitted information and the submitted arguments.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with sections 418.181 and 418.182 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act.¹ Section 418.181 provides,

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

Id. § 418.182(a), (b). The fact information may generally be related to a governmental body’s security concerns or to a security system does not make the information *per se* confidential under sections 418.181 and 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting sections 418.181 and 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state some of the submitted information “consists of documentation detailing the addresses and number of security cameras and supporting equipment installed in [county] facilities, as well as the type of cameras and supporting equipment.” You argue the information at issue, if released, “would reveal the number of cameras, their capabilities, and

¹Although you do not cite to section 418.182 of the Government Code in your brief, we understand you to raise this section based on the substance of your argument.

their locations, thereby exposing the implicated county facilities to terrorism or related criminal activity.” Upon review, we find some of the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. This information, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. However, we note some of the remaining information at issue is related to the expenditure of funds by the county for its video surveillance system. This information is subject to disclosure under section 418.182(b) of the Government Code and may not be withheld under section 552.101 in conjunction with section 418.182(a) of the Government Code. *See id.* § 418.182(b); *see also id.* § 418.182(a) (section 418.182(a) not applicable to information subject to section 418.182(b)). Moreover, you have not demonstrated how the remaining information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, we find the county may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

You assert the county’s facilities are critical infrastructure for the purposes of section 418.181 of the Government Code. *See id.* § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). However, you do not explain how any of the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, we find the county may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 418.181 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 comments from CSI explaining why the remaining information should not be released. Therefore, we have no basis to conclude CSI has a protected proprietary interest in the remaining 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 county may not withhold the remaining information on the basis of any proprietary interest CSI may have in the information.

We now turn to 911's arguments against disclosure of its remaining information. First, 911 argues its information is marked "confidential" and supplied with the expectation of confidentiality. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to 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 Gov't Code § 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

Next, we understand 911 to argue portions of its remaining information are excepted from disclosure under section 552.110(a) of the Government Code.² Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See* 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, 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

²Although 911 does not cite to section 552.110 of the Government Code in its brief, we understand 911 to raise this exception based on the substance of the submitted argument.

Restatement's list of six trade secret factors.³ RESTATEMENT OF TORTS § 757 cmt. b. 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* Open Records Decision No. 552 at 5 (1990). 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). We note pricing information pertaining to a particular 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; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

911 asserts portions of its information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude 911 has established a *prima facie* case that some of its information constitutes trade secret information. Therefore, the information we have marked must be withheld under section 552.110(a) of the Government Code. We note, however, 911 has published the identities of some of its customers on its website. Thus, 911 has failed to demonstrate the information it has published on its website is a trade secret. We conclude 911 has failed to establish a *prima facie* case that any portion of its remaining information meets the definition of a trade secret. We further find 911 has not demonstrated the necessary factors to establish a trade secret claim for its remaining information. *See* ORD 402. Therefore, none of 911's remaining information may be withheld under section 552.110(a).

³The 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).

The remaining documents also include information that is subject to section 552.136 of the Government Code.⁴ Section 552.136 of the Government Code provides, “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the county must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code, (2) the information we marked under section 552.110(a) of the Government Code, and (3) the information we marked under section 552.136 of the Government Code. The county must release the remaining 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

⁴The 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).

Ref: ID# 513841

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Kirk Davidson
Commercial Security Integration, Inc.
2600 McHale Court, Suite 150
Austin, Texas 78758
(w/o enclosures)

Mr. Brian Heldreth
VP of Operations
911 Security Cameras, Inc.
10878 Plano Road #F
Dallas, Texas 75238
(w/o enclosures)