



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

Mr. Glen D. Dunbar
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2014-02669

Dear Mr. Dunbar:

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# 513816.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified proposal, final contract, and scoring documentation pertaining to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Correct Care Solutions, LLC ("CCS"). Accordingly, you state, and provide documentation showing, you notified CCS of the request for information and of its right 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 received comments from CCS. We have considered the submitted arguments and reviewed the submitted information.

CCS contends some of its information is excepted from disclosure 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.¹ 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 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)*.

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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 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, release of requested information would cause that party substantial competitive harm).

¹The 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)*.

Upon review, we find CCS has established a *prima facie* case its customer information constitutes trade secret information for purposes of section 552.110(a). Accordingly, to the extent the customer information at issue is not publicly available on CCS's website, the sheriff's office must withhold the customer information at issue under section 552.110(a).² However, we conclude CCS has failed to establish a *prima facie* case the remaining information at issue meets the definition of a trade secret. Moreover, we find CCS has not demonstrated the necessary factors to establish a trade secret claim for the remaining information at issue. *See* ORD 402. Therefore, none of CCS's remaining information at issue may be withheld under section 552.110(a).

CCS further argues the information in Attachment B and any of its remaining customer information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find CCS has demonstrated the information in Attachment B constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the sheriff's office must withhold this information under section 552.110(b) of the Government Code. However, to the extent the customer information at issue is publicly available on CCS's website, we find CCS has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of this customer information would cause the company substantial competitive harm. *See* ORD 661. We, therefore, conclude the city may not withhold this information under section 552.110(b).

We note the remaining information contains information subject to section 552.136 of the Government Code, which 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."³ 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. Upon review, the sheriff's office must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.⁴

In summary, the sheriff's office must withhold the customer information at issue under section 552.110(a) of the Government Code to the extent the customer information at issue is not publicly available on CCS's website. The sheriff's office must withhold the

²As our ruling is dispositive, we need not address CCS's remaining argument under section 552.110(b) of the Government Code against disclosure for this information.

³The 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 No. 481 (1987), 480 (1987), 470 (1987).

⁴We note section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

information in Attachment B under section 552.110(b) of the Government Code. The sheriff's office must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The sheriff's office 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 513816

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Leilani S. Boulware
General Counsel
Correct Care Solutions
1283 Murfreesboro Road, Suite 500
Nashville, Tennessee 37217
(w/o enclosures)