



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2014

Ms. Catelyn H. Kostbar
Administrative Technician III
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2014-08658

Dear Ms. Kostbar:

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# 523494 (HCAD Internal Ref. No. 13-4286).

The Harris County Appraisal District (the "district") received a request for the vehicle listing for district account number 2178532. You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.130 of the Government Code. Additionally, you state the release of some of the submitted information may implicate the interests of InfoNation, Inc. ("InfoNation"). Accordingly, you state, and provide documentation demonstrating, the district notified InfoNation of the request for information and of its right to submit arguments stating why its 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from InfoNation. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the district has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301. When a governmental body fails to comply with

the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.130 of the Government Code and third-party interests can provide compelling reasons to withhold information, we will consider the applicability of section 552.130, as well as any arguments submitted by a third party, to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find some of the submitted information consists of motor vehicle record information. Therefore, section 552.130 of the Government Code is applicable to this information, which we have marked. However, the requestor may represent the owner of the vehicles at issue. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Thus, we must rule conditionally. If the requestor does not represent the owner of the vehicles at issue, then the district must withhold the information we have marked under section 552.130 of the Government Code. However, if the requestor represents the owner of the vehicles at issue, then the district may not withhold the marked information under section 552.130. *See id.* The remaining information is not subject to section 552.130, and may not be withheld on that basis.

We next address the arguments submitted to this office by InfoNation. 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 section excepts from disclosure information deemed confidential by statute, such as section 730.004 of the Transportation Code, which provides that "[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004; *see also id.* § 730.003(4) (defining "motor vehicle record" to include record that pertains to motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by agency of this state).

Section 552.101 also encompasses section 730.013, which provides that for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

(c) Any authorized recipient who resells or rediscloses personal information obtained from an agency shall be required by that agency to:

(1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2) provide copies of those records to the agency on request.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$25,000.

Id. § 730.013. InfoNation asserts the submitted information is confidential under chapter 730 of the Transportation Code. You inform this office the remaining information consists of vehicle valuation and registration information received by the district from InfoNation to assist the district in identifying and valuing vehicles subject to ad valorem taxation. InfoNation asserts it obtained the information at issue from the Texas Department of Motor Vehicles, Vehicle Titles and Registration Division (the “department”) pursuant to a written service agreement in accordance with the provisions of chapter 730. We note the department is an agency under section 730.003(1) that obtains or compiles motor vehicle records. We also note “personal information” means information that identifies a person, including an individual’s photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. *See id.* § 730.003(6); *see also id.* § 730.003(5) (“person” means individual, organization, or entity other than this state or agency of this state). Accordingly, we find by obtaining motor vehicle information from the department to assist the district in carrying out its functions, InfoNation is an authorized recipient of personal information for purposes of section 730.013. *See id.* § 730.007(a)(2)(A)(ii) (authorized recipient includes private entity acting on behalf of government agency in carrying out agency’s functions). However, upon review, we find no portion of the remaining information contains personal information for

purposes of chapter 730 of the Transportation Code. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code.

InfoNation raises section 2721 of title 18 of the United States Code for the remaining information at issue. Section 2721 is also encompassed by section 552.101 of the Government Code and provides, in relevant part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)-(c). For purposes of section 2721, section 2725 of title 18 of the United States Code defines “motor vehicle record” and “personal information” as follows:

(1) “[M]otor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

...

(3) “[P]ersonal information” means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

Id. § 2725(1), (3). Upon review, we find no portion of the remaining information consists of personal information for the purposes of section 2721. Thus, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code.

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. *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 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 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 5-6 (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).

Upon review, we find InfoNation has failed to demonstrate how any portion of the remaining information meets the definition of a trade secret, nor has the company demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 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). We also find InfoNation has not established any of the remaining information constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Therefore, the district may not withhold any of the remaining information pursuant to section 552.110 of the Government Code.

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.

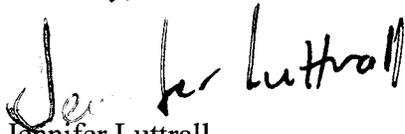
RESTATEMENT OF TORTS § 757 cmt. b (1939); *see* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

In summary, if the requestor does not represent the owner of the vehicles at issue, then the district must withhold the information we have marked under section 552.130 of the Government. If the requestor represents the owner of the vehicles at issue, then the district may not withhold the marked information on that ground but, instead, must release it to the requestor. The remaining 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 523494

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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