



ATTORNEY GENERAL OF TEXAS  
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July 11, 2014

Ms. Ana Vieira  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
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OR2014-12009

Dear Ms. Vieira:

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# 528838 (University of Texas OGC# 155729).

The University of Texas Southwestern Medical Center (the "university") received a request for the contracts and proposals related to BID 21993628. We understand the university released some information to the requestor. Although the university takes no position with respect to the public availability of the remaining requested information, you state release of this information may implicate the proprietary interests of Accolite, Inc.; Advantage Technical Resourcing, Inc. ("Advantage"); Align Healthcare Consulting, L.L.C.; Atrilogy Solutions Group, Inc.; Beacon Partners ("Beacon"); Blue Horseshoe Network, Inc.; BlueTree Network, Inc.; Cipe Consulting Group, L.L.C.; Coastal Healthcare Consulting, Inc. ("Coastal"); CSI Healthcare IT ("CSI"); Culbert Healthcare Solutions, Inc. ("Culbert"); Cumberland Consulting Group, L.L.C. ("Cumberland"); Direct Consulting Associates; Divurgent, L.L.C.; Dynamic Computing Services, Inc.; E-Consulting, Inc.; eHealthcare Consulting, Inc.; Encore Health Resources ("Encore"); ESD; EVET Solutions; Ernst & Young; Falcon Consulting Group, L.L.C. ("Falcon"); Greythorn, Inc. ("Greythorn"); Hayes Management Consulting ("Hayes"); The HCI Group ("HCI"); Health Systems Informatics ("HSI"); HIMS Consulting Group, Inc. ("HIMS"); Innovative Consulting Group, L.L.C. ("Innovative"); Leidos Health ("Leidos"); Lucca Consulting Group, Inc.; Mediant Health Resources, Inc. ("Mediant"); Medix Staffing Solutions ("Medix"); MedSys Group, L.L.C.; Nordic Consulting Partners, Inc. ("Nordic"); Odyssey Information Services; Parker Healthcare IT ("Parker"); Sagacious Consultants, Santa Rosa Consulting ("Santa Rosa");

Systems Personnel, Inc. ("Systems"); TreeHouse Resources, L.L.C.; TEKsystems; Virtelligence; Vonlay, L.L.C. ("Vonlay"); Workbeast, L.L.C. ("Workbeast"); and Xerox. Accordingly, you inform us, and provide documentation showing, you notified these third parties of the request and of their right to submit arguments to this office explaining why their 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); *see also* 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 considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have received comments from Advantage, Beacon, Coastal, CSI, Culbert, Cumberland, Encore, Falcon, Greythorn, Hayes, HCI, HSI, HIMS, Innovative, Leidos, Mediant, Medix, Nordic, Parker, Santa Rosa, Systems, Vonlay, and Workbeast. We have not received arguments from any of the remaining interested third parties. Thus, the remaining third parties have failed to demonstrate that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 2 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any of the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Falcon and Medix claim they submitted their information to the university with the expectation that their respective information would remain confidential. We note 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 by 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 did not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Falcon and Medix have not identified any law that authorizes the university to enter into an agreement to keep any of the submitted information confidential. Therefore, the university may not withhold Falcon or Medix's information unless it falls within the scope of an exception to disclosure, notwithstanding any expectation or agreement to the contrary.

Advantage, Beacon, Coastal, CSI, Culbert, Cumberland, Encore, Falcon, Greythorn, Hayes, HCI, HSI, HIMS, Innovative, Leidos, Mediant, Medix, Nordic, Parker, Santa Rosa, and Systems claim some or all of their 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 that are 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 763, 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.<sup>1</sup> 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

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<sup>1</sup>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).

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). 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.” *See* RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982).

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* ORD 661 at 5-6.

Advantage, Beacon, CSI, Culbert, Cumberland, Falcon, Greythorn, Hayes, HIMS, Leidos, Mediant, Medix, and Santa Rose claim some or all of their information is confidential under section 552.110(a) of the Government Code. Upon review, we find Advantage, Beacon, CSI, Falcon, Hayes, HIMS, Leidos, Mediant, Medix, and Santa Rosa have established a *prima facie* case their customer information constitutes trade secret information for purposes of section 552.110(a). Accordingly, to the extent Advantage, Beacon, CSI, Falcon, Hayes, HIMS, Leidos, Mediant, Medix, and Santa Rosa’s customer information is not publicly available on these companies’ websites, the university must withhold the customer information at issue under section 552.110(a) of the Government Code.<sup>2</sup> However, we find Beacon, CSI, Culbert, Cumberland, Falcon, Greythorn, HIMS, Leidos, Mediant, Medix, and Santa Rosa have failed to establish a *prima facie* case that any of their remaining information at issue meets the definition of a trade secret, nor have these parties demonstrated the necessary factors to establish a trade secret claim for this information. Therefore, the university may not withhold any of the remaining information under section 552.110(a) of the Government Code.

Beacon, Coastal, CSI, Culbert, Cumberland, Encore, Falcon, Greythorn, Hayes, HCI, HIMS, HSI, Innovative, Leidos, Mediant, Medix, Nordic, Parker, Santa Rosa, and Systems claim portions of their information are protected under section 552.110(b) of the Government Code. Upon review, we find Coastal, CSI, Culbert, Cumberland, Encore, Greythorn, Hayes, HCI, HIMS, HSI, Innovative, Leidos, Mediant, Nordic, Parker, Santa Rosa, and Systems have demonstrated some of their information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly,

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

the university must withhold the information we have marked under section 552.110(b).<sup>3</sup> We also find Coastal, Culbert, Cumberland, Greythorn, HCI, HSI, Innovative, Nordic, and Systems have demonstrated their customer information constitutes commercial or financial information for purposes of section 552.110(b). Accordingly, to the extent Coastal, Culbert, Cumberland, Greythorn, HCI, HSI, Innovative, Nordic, and Systems' customer information is not publicly available on these companies' websites, the university must withhold the customer information at issue under section 552.110(b).<sup>4</sup> However, we find Beacon, Coastal, CSI, Culbert, Cumberland, Falcon, Greythorn, HCI, HIMS, HSI, Leidos, Mediant, Medix, Nordic, Parker, Santa Rosa, and Systems have not demonstrated that substantial competitive injury would likely result from the release of any of their remaining information. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception under the Act). Therefore, the university may not withhold any of the remaining information under section 552.110(b) of the Government Code.

Advantage, CSI, HIMS, HSI, Mediant, Santa Rosa, and Workbeast claim section 552.101 of the Government Code for portions of their information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Advantage, HIMS, HSI, Santa Rosa, and Workbeast have not directed our attention to any law under which any of their information is considered to be confidential for purposes of section 552.101. Accordingly, the university may not withhold any of these parties' information under section 552.101 of the Government Code.

CSI claims some of its remaining information is excepted under section 552.101 of the Government Code in conjunction with the common-law as a trade secret. As discussed above, the Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Huffines*, 314 S.W.2d 763; *see also* ORD 552 at 2. 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. *See* ORD 552 at 5-6. Having considered its arguments, we find CSI has failed

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

to demonstrate any of its remaining information at issue meets the definition of a trade secret, nor has CSI demonstrated the necessary factors to establish a trade secret claim for this information. Thus, the university may not withhold any of the remaining information under section 552.101 in conjunction with the common-law as a trade secret.

Mediant raises section 552.101 of the Government Code in conjunction with Arizona Trade Secret law. However, section 552.101 does not incorporate the confidentiality provisions of other states' statutes and regulations because those laws only govern the disclosure of information held by entities of those states. *But see* Open Records Decision No. 561 at 6-7 (1990) (noting that if agency of federal government shares its information Texas governmental entity, Texas entity must withhold information that federal agency determined to be confidential under federal law). Accordingly, the university may not withhold any of Mediant's remaining information under section 552.101 of the Government Code on the basis of Arizona state law.

Coastal, HCI, HSI, Leidos, Nordic, Santa Rosa, and Vonlay raise section 552.104 of the Government Code for some of their information. Section 552.104 protects the interests of governmental bodies, not third parties. Open Records Decision No. 592 (1991). As the university does not raise section 552.104, this section is not applicable to the information at issue. *Id.* (section 552.104 may be waived by governmental body). Thus, the university may not withhold any of the submitted information under section 552.104 of the Government Code.

Coastal raises section 552.139 of the Government Code for portions of its remaining information. Section 552.139 provides, in part:

(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.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). Coastal generally asserts portions of its remaining information are excepted from disclosure under section 552.139. However, Coastal has not demonstrated how any of the information at issue relates to computer network security, or to the design, operation, or defense of a computer network as contemplated by section 552.139(a). Further, we find Coastal has failed to explain how any of the information at issue consists of a computer network vulnerability report or assessment for purposes of section 552.139(b). Accordingly, the university may not withhold any of the information at issue under section 552.139 of the Government Code.

Encore raises section 552.147 of the Government Code for a portion of its information. Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147(a). Therefore, the university may withhold the social security numbers in the submitted information under section 552.147 of the Government Code.

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>5</sup> Section 552.136 states “[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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Therefore, the university must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

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<sup>5</sup>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).

We also note some of the remaining information may 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, to the extent Advantage, Beacon, CSI, Falcon, Hayes, HIMS, Leidos, Mediant, Medix, and Santa Rosa's customer information is not publicly available on these companies' websites, the university must withhold the customer information at issue under section 552.110(a) of the Government Code. The university must withhold the information we have marked under section 552.110(b) of the Government Code. To the extent Coastal, Culbert, Cumberland, Greythorn, HCI, HSI, Innovative, Nordic, and Systems' customer information is not publicly available on these companies' websites, the university must withhold the customer information at issue under section 552.110(b). The university must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The university may withhold the social security numbers in the submitted information. The university must release the remaining information; however, any information protected by copyright 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.

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,



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MAK/tch

Ref: ID# 528838

Enc. Submitted documents

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