



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2014

Mr. Allan Meesey  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2014-12102

Dear Mr. Meesey:

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# 528976.

The Texas Department of Transportation (the "department") received a request for all of the bids for the San Angelo Workplace Travel Study, bid number Q442013035818000. 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 Alliance Transportation Group, Inc. ("Alliance"). Accordingly, you state, and provide documentation showing, you notified Alliance 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 have received comments from Alliance. We have considered the submitted arguments and reviewed the submitted information.

Initially, the department informs us it has released the proposal submitted by ETC Institute, which was the subject of a previous request for information, in accordance with Open Records Letter No. 2013-19815 (2013). In Open Records Letter No. 2013-19815, we determined the department must withhold certain information under section 552.136 of the Government Code, but must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, we agree the department must continue to rely on Open Records Letter No. 2013-19815 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination).

Alliance raises section 552.104 of the Government Code for some of its information. Section 552.104 excepts from disclosure "information that, if released, would give advantage

to a competitor or bidder.” Gov’t Code § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body’s interest in competitive bidding situation). As the department does not argue section 552.104 is applicable, we will not consider Alliance’s claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the department may not withhold any of the submitted information under section 552.104 of the Government Code.

Alliance claims 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.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b. This

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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).

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).

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

Alliance contends some of its information constitutes trade secret information for purposes of section 552.110(a) of the Government Code. Upon review, we find Alliance has failed to establish a *prima facie* case any portion of its information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for any of its information. *See* ORD 402. Therefore, none of Alliance’s information may be withheld under section 552.110(a).

In summary, the department must continue to rely on Open Records Letter No. 2013-19815 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the client information at issue is not publicly available on Alliance’s website, the department must withhold the client information at issue under section 552.110(b) of the Government Code. The department 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](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/bhf

Ref: ID# 528976

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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