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December 8, 2014

Ms. E. Barry Gaines  
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OR2014-22185

Dear Ms. Gaines:

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# 545874 (HCAD Internal Reference No. 14-4013).

The Harris County Appraisal District (the "district") received a request for the district's "agent file" containing at least account number and agent code. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You state the release of the submitted information may implicate the interests of numerous third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the request for information and of their rights to submit arguments stating 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); 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 Dudley Veal Property Tax Group ("Dudley"), Dugger & Associates ("Dugger"), Novotny & Company ("Novotny"), Gil Masters & Associates, Inc. ("Masters"), NetTax, Keyword Express, LLC ("Keyword Express"), Unclaimed Funds, Burnitt Property Tax Advisors ("Burnitt"), Advanced Property Tax Compliance ("Advanced"), and the Law

Office of John H. Polk (“Polk”). We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

Initially, we note some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2014-13497A (2014). In that ruling, we held (1) to the extent the client information is not publicly available on their websites, the district must withhold the customer information of NetTax, Keyword Express, Unclaimed Funds, Burnitt, Novotny, Advanced, and Polk under section 552.110(a) of the Government Code and (2) release the remaining information. You state the law, facts, or circumstances upon which the prior ruling was based have not changed. Thus, the district must continue to rely on Open Records Letter No. 2014-13497A as a previous determination and withhold or release the identical information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). You state some of the information at issue was not previously ruled upon. Thus, we will address the submitted arguments for the submitted information not subject to Open Records Letter No. 2014-13497A.

Next, 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 only received arguments from the third parties listed above. Thus, the remaining third parties have not demonstrated they have protected proprietary interests 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 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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<sup>1</sup>We note, and you acknowledge, the department 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. *See* 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 compelling reason may exist to withhold information when the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). As such, because section 552.110 of the Government Code and third-party interests can provide a compelling reason for non-disclosure, we consider whether any of the information at issue may be withheld under section 552.110 of the Government Code or on behalf of a third party. *See* Gov’t Code §§ 552.007, .302, .352.

Accordingly, the district may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Although you raise section 552.110, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See Gov't Code* § 552.110. Thus, we do not address the district's argument under section 552.110 on behalf of any of the third parties. However, Dudley, Dugger, Masters, NetTax, Keyword Express, Unclaimed Funds, Burnitt, Advanced, Polk, and Novotny contend 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 id.* § 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 the following:

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>2</sup> RESTATEMENT OF TORTS § 757 cmt. b. This

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<sup>2</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;

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* 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).

Section 552.110(b) 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, substantial competitive injury would likely result from release of the information at issue. *See id.*; *see also* ORD 661 at 5 (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).

Dudley, Dugger, Masters, NetTax, Keyword Express, Unclaimed Funds, Burnitt, Advanced, Polk, and Novotny assert certain information constitutes trade secret information under section 552.110(a) of the Government Code. Upon review, we find each of these third parties has established a *prima facie* case its customer information constitutes trade secret information for purposes of section 552.110(a). Therefore, the district must withhold the customer information of each of these third parties under section 552.110(a) of the Government Code; however, to the extent the customer information is publicly available on these third parties’ websites, it may not be withheld under section 552.110(a).<sup>3</sup> However, we conclude these third parties have failed to establish a *prima facie* case any portion of their remaining information meets the definition of a trade secret. We further find these third parties have not demonstrated the necessary factors to establish a trade secret claim for its remaining information. *See* ORD 402. Therefore, none of these third parties’ remaining information may be withheld under section 552.110(a).

Furthermore, Keyword Express, Unclaimed Funds, and Polk argue their remaining information consists of commercial or financial information, the release of which would cause them substantial competitive harm under section 552.110(b) of the Government Code. However, we find these listed parties have not demonstrated that substantial competitive

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(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).

<sup>3</sup>As our ruling is dispositive for this information, we need not address Dudley, Dugger, and Novotny’s remaining arguments against disclosure.

injury would result from the release of any of the remaining information at issue. *See* ORD 661 at 5. Therefore, we conclude the district may not withhold this information under section 552.110(b).

In summary, the district must rely on Open Records Letter No. 2014-13497A as a previous determination and withhold the identical information at issue in accordance with that ruling. The district must withhold the customer information of Dudley, Dugger, Masters, NetTax, Keyword Express, Unclaimed Funds, Burnitt, Advanced, Polk, and Novotny under section 552.110(a) of the Government Code; however, to the extent the customer information is publicly available on these third parties' websites, it may not be withheld under section 552.110(a) of the Government Code. 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](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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Open Records Division

DO/akg

Ref: ID# 545874

Enc. Submitted documents

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