



November 21, 2001

Ms. Carol Longoria  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 7801-2902

OR2001-5403

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155185.

The University of Texas System (the "system") received a request for "copies of proposals submitted to the [system] for [a certain] Retirement and Benefits RFP . . . ." You advise this office that the requested information may include the proprietary information of several third parties, but that only Deloitte & Touche L.L.P. ("Deloitte") and Towers Perrin object to portions of their proposals being disclosed. You have submitted copies of letters you sent to both Deloitte and Towers Perrin pursuant to Government Code section 552.305(d), notifying them of the request for information. You further advise us that you will release to the requestor the proposals of the other third parties along with those portions of Deloitte's and Towers Perrin's proposals that they do not seek to keep confidential. In addition, you inform us that you have no opinion concerning the confidentiality of Deloitte's and Towers Perrin's proposals. We have considered the arguments presented and reviewed the submitted information.

We note that this office has not received any comments from Towers Perrin explaining why portions of its proposal should not be released. Therefore, we have no basis to conclude that Towers Perrin's responsive information is excepted from disclosure under section 552.110. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, you must release the proposal of Towers Perrin in its entirety.

We did, however, receive comments from Deloitte, and it claims that portions of its proposal are protected under section 552.110. Section 552.110 protects the proprietary interests of

private parties by excepting from disclosure two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision,” and (2) commercial 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. *See* Gov’t Code § 552.110(a), (b).

The Texas Supreme Court has adopted the definition of a “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 a single or ephemeral event 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), *cert. denied*, 358 U.S. 898 (1958). If the governmental body takes no position on the application of the “trade secrets” component of section 552.110 to the information at issue, this office will accept a private person’s claim for exception as valid under that component if that person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law.<sup>1</sup> *See* Open Records Decision No. 552 at 5 (1990).

---

<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 (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Deloitte objects to the release of pages 5-6, 18-19, and 29-32 of its proposal because it claims those pages contain customer lists that are protected trade secrets. We agree with Deloitte with respect to pages 5-6 and 29-32; however, we were not provided with a copy of pages 18-19, and this ruling therefore does not address whether those pages are subject to disclosure. Hence, you must withhold the highlighted portions of pages 5-6 and 29-32 pursuant to 552.110(a). Because section 552.110(a) is dispositive, we do not address whether the information is commercial or financial information excepted from public disclosure under section 552.110(b).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

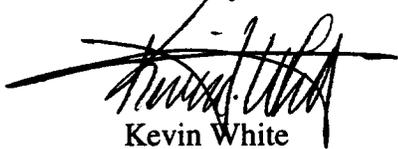
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kevin White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 155185

Enc. Submitted documents

c: Ms. Jill Davidson  
Andersen, LLP  
901 Main Street, Suite 5600  
Dallas, Texas 75202  
(w/o enclosures)

Mr. Richard L. Davenport, FSA  
Deloitte & Touche, LLP  
2200 Ross Avenue, Suite 1600  
Dallas, Texas 75201-6778  
(w/o enclosures)

Ms. Leslie Finertie, FSA  
Towers Perrin  
525 Market Street, Suite 2900  
San Francisco, California 94105-2708  
(w/o enclosures)