



February 14, 2002

Ms. Carol Longoria  
Office of the General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2002-0746

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# 158608.

The University of Texas System (the "U.T. System") received a request for information regarding proposals submitted to The University of Texas Health Science Center at Houston. The requestor also seeks "the individual evaluations" of the proposals. As the U.T. System makes no comments regarding the evaluations and submitted no representative samples of this information, we assume the System has released to the requestor any responsive information, if it exists. If you have not released any such information, you must release it to the requestor at this time. Gov't Code §§552.301(a), 552.302. As to the submitted proposals, you make no arguments and take no position as to whether the submitted information is excepted from disclosure. You state, and provide documentation showing, that you notified the third parties whose proprietary interests may be implicated, Brown & Root, 3DI/Jamail, Way Engineering, and Vaughn Construction Company, of the request for information. *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 that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

You state that the requestor verbally modified his request and "that he does not want any of the other vendors' "financial information," but rather is only interested in seeing "how they package their information" and the "verbiage used." In addition, you state that Vaughn Construction Company has identified a small portion of its information as "financial information" and thus, nonresponsive to the request. You indicate that you are not certain what is meant by "financial information." As you are uncertain of the information the

requestor seeks, that is, precisely what “financial information” the requestor is excluding from the request, the Act permits you to request clarification of the request from the requestor. Gov’t Code §552.222(b); *See* Open Records Decision No. 663 (1999).

Section 552.305 allows an interested party 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 decision, this office has received no correspondence from Brown & Root, Way Engineering, or Vaughn Construction Company. Thus, these parties have not demonstrated that their respective information must be withheld from public disclosure. *See* Gov’t Code § 552.110(a), (b); Open Records Decision Nos. 552 at 5 (1990) (attorney general will grant exception to disclosure under statutory predecessor to Gov’t Code § 552.110(a) if governmental body takes no position, third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (business enterprise that claims exception for commercial or financial information under Gov’t Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Consequently, the U.T. System must release to the requestor the responsive information of Brown & Root, Way Engineering, and Vaughn Construction.

Jamail Construction (“Jamail”) responded to the district’s section 552.305 notice by claiming that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.104 and 552.110 of the Government Code.<sup>1</sup> Jamail claims that the submitted proposal is excepted from disclosure under section 552.104 because release would give advantage to a competitor or bidder. However, section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). The U.T. System has not argued that the release of Jamail’s proposal to the requestor would harm its interests in a particular competitive situation. Therefore, no portion of the submitted proposal may be withheld from disclosure pursuant to section 552.104 of the Government Code.

Jamail argues that the submitted information is excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In this instance Jamail has not established that any portion of the submitted information is made confidential by law. Trade secret protection is encompassed by section 552.110 of the Government Code,

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<sup>1</sup>Jamail states that 3D/International was Jamail’s joint venture partner on the submitted proposal. We note, however, that we have not received any correspondence from 3d/International in response to the U.T. System’s section 552.305 notice.

which Jamail has raised. Furthermore, we find no information protected from disclosure on privacy grounds. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); see also Open Records Decision No. 600 (1992), 545 (1990). Therefore, the U.T. System may not withhold from the requestor information pertaining to Jamail under section 552.101.

Jamail also claims that its proposal to the U.T. System is excepted from disclosure pursuant to section 552.110(a) of the Government Code. Section 552.110 has two parts.<sup>2</sup> Jamail brings its claim under the trade secret prong. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, 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 *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958). In making a trade secret determination, this office considers the six trade secret factors in the Restatement of Torts.<sup>3</sup> See Open Records Decision No. 552 at 5 (1990). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we

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<sup>2</sup>Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets 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.

<sup>3</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(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).

accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. *See id.* 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. *See Open Records Decision No. 402 (1983).* In this instance, Jamail has failed to adequately address the six trade secret factors. Consequently, Jamail has not established a *prima facie* case for exception under section 552.110(a). Therefore, the U.T. System may not withhold from disclosure Jamail's bidding information under section 552.110(a).

However, we note that the submitted information contains e-mail addresses that are excepted from disclosure under section 552.137. Section 552.137 provides in relevant part:

**Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.**

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Section 552.137 requires the U.T. System to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the U.T. System must withhold the e-mail addresses in the submitted information under section 552.137.

In summary, we presume the "individual evaluations" of the proposals have already been released to the requestor. Upon clarification from the requestor as to the meaning of "financial information," the U.T. System need not release to the requestor the nonresponsive "financial information" in each proposal. The U.T. System must withhold the e-mail addresses of members of the public, unless there has been consent for release. The remainder of the submitted information must be released to the requestor.

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).

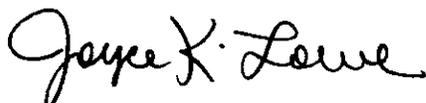
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 158608

Enc: Submitted documents

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