



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

February 12, 2003

Ms. Ruth H. Soucy  
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Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2003-0948

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176465.

The Comptroller of Public Accounts (the "comptroller") received a request for the following information pertaining to RFP #144c:

- (1) A list of all applicants that submitted responses to the RFP.
- (2) A copy of the (i) Executive Summary and (ii) Qualification Questionnaire for each respondent to the RFP (other than Carlson Capital Advisors, LP ("CAA"))[.]
- (3) A copy of any written or recorded meeting minutes, memorandum or other correspondence from August 28, 2002 until November 13, 2002 regarding the decision and process to withdraw the RFP.
- (4) A copy of any reports, memorandum or similar correspondence (including those prepared by RBC Dain Rauscher) evaluating CAA's application for the RFP.

You indicate that the comptroller has released some of the responsive information. However, you claim that some of the requested information is excepted from disclosure under

sections 552.107, 552.111, and 552.137 of the Government Code.<sup>1</sup> You also indicate that the request may implicate the proprietary rights of numerous third parties. Consequently, you notified these third parties pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305(d) (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). We have considered all of the submitted arguments and reviewed the submitted information.

We begin by noting that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 . . . .

Gov't Code § 552.022(a)(1). The submitted information contains a completed report that is subject to section 552.022(a)(1) and, therefore, may only be withheld if it is excepted from disclosure under section 552.108 of the Government Code or is confidential under other law. The only exception you raise for this report is section 552.111 of the Government Code. Section 552.111 is a discretionary exception and, thus, is not other law under which information is made confidential. *See* Open Records Decision No. 663 (1999) (governmental body may waive section 552.111). Therefore, the comptroller may not withhold the submitted completed report, which we have marked, but must release the report pursuant to section 552.022(a)(1).

Next, we address your argument that some of the submitted information is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the

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<sup>1</sup>We also note that you raised section 552.104 of the Government Code as a possible exception to the disclosure of some of the requested information. However, you did not provide any arguments explaining why this exception applies to the submitted information. Therefore, the submitted information is not excepted from disclosure under section 552.104. *See* Gov't Code §§ 552.301(e), .302; Open Records Decision No. 592 at 8 (1991) (governmental body may waive section 552.104).

information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You contend that a portion of the submitted information consists of e-mails between comptroller attorneys and their clients in the comptroller’s office and in the Texas Treasury Safekeeping Trust Company (the “Trust Company”) concerning the RFP and certain contracting issues. You explain that the comptroller is the sole shareholder and director of the Trust Company and provides legal services to the Trust Company. Moreover, you state that none of the e-mails have been disclosed outside of the agency. Based on your arguments and our review of the submitted information, we agree that all of the e-mails you seek to withhold under section 552.107 of the Government Code are protected by the attorney-client privilege and may therefore be withheld from disclosure.

You also contend that a separate e-mail between the Chief Investment Officer of the Trust Company and other members of the investment committee and staff of the Trust Company is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 provides that “an interagency or intraagency memorandum or letter that would not

be available by law to a party in litigation with the agency is excepted from [required public disclosure].” This section encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege, as incorporated into the Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See id.*; Open Records Decision No. 615 at 5 (1993). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, the deliberative process privilege does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5; *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). Upon review of your arguments and the e-mail at issue, we find that a portion of the e-mail contains advice, opinion, or recommendations on policymaking matters. The comptroller may withhold this portion of the e-mail, which we have marked, under section 552.111 of the Government Code. The remainder of the e-mail at issue does not contain advice, opinion, or recommendations on policymaking matters, and therefore, must be released.

You indicate that the release of the remainder of the submitted information may implicate the proprietary rights of third parties.<sup>2</sup> An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov’t Code § 552.305(d)(2)(B)*. As of the date of this letter, VJW-Panorama, L.L.P.; Lehman Brothers Alternative Investment Management, L.L.C.; Arden Asset Management, Inc. (“Arden”); SSARIS Advisors, L.L.C.; Miramar Alternative Strategies, L.L.C.; and Northwater Capital Management Inc. have not submitted to this office any arguments in favor of withholding their information. Therefore, these third parties have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *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). Thus, the comptroller may not withhold the information pertaining to these third parties under section 552.110.

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<sup>2</sup>You have provided information pertaining to the following third parties: Private Advisors, L.L.C.; VJW-Panorama, L.L.P.; Tremont Advisors, Inc.; Lehman Brothers Alternative Investment Management, L.L.C.; Arden Asset Management, Inc.; Structured Portfolio Management, L.L.C.; SSARIS Advisors, L.L.C.; Miramar Alternative Strategies, L.L.C.; Carlyle Asset Management Group, L.L.C.; Banc of America Capital Management, L.L.C.; and Northwater Capital Management Inc.

However, we note that a portion of the information you have marked as responsive in Arden's proposal is excepted from disclosure under section 552.137 of the Government Code.<sup>3</sup> Section 552.137 provides:

- (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. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The comptroller must, therefore, withhold e-mail addresses of members of the public contained in Arden's responsive information under section 552.137. The comptroller must release the remainder of Arden's responsive information.

This office has received arguments from the following third parties: Private Advisors, L.L.C. ("Private Advisors"); Tremont Advisers, Inc. ("Tremont"); Structured Portfolio Management, L.L.C. ("SPM"); Carlyle Asset Management Group, L.L.C. ("CAMG"); and Banc of America Capital Management, L.L.C. ("Banc of America"). We will therefore address the arguments of these third parties.

First, Banc of America contends that its Executive Summary and Qualification Questionnaire are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 2156.123 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 2156.123 of the Government Code provides:

- (a) The commission or other state agency shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.
- (b) The commission or other state agency shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from required disclosure under Subchapter C, Chapter 552.

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<sup>3</sup>The identical exception has been added as section 552.136 of the Government Code. See Gov't Code § 552.136.

Gov't Code § 2156.123(a),(b). Subchapter C of chapter 2156 of the Government Code prescribes procedures for the use of competitive sealed bid proposals by state agencies. See Gov't Code § 2156.121. We note that section 2156.123 does not contain express language that makes information confidential. This office has held that the statutory confidentiality protected section 552.101 requires express language making certain information confidential or by stating that information shall not be released to the public. Open Records Decision No. 478 (1987) (construing statutory predecessor to section 552.101). Thus, because section 2156.123 does not expressly make information confidential or expressly state that the information shall not be released to the public, the comptroller may not withhold Banc of America's information under section 552.101 in conjunction with section 2156.123 of the Government Code.

Next, CAMG appears to contend that its Executive Summary and Qualification Questionnaire are excepted from disclosure because "the RFP contains an express Nondisclosure Agreement obligating CAMG and [the Trust Company] to maintain the confidentiality of any information pertaining to the RFP." However, information is not confidential under the Public Information Act (the "Act") simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."). Consequently, unless CAMG's information falls within an exception to disclosure, it must be released, notwithstanding any agreement specifying otherwise.

CAMG as well as Private Advisors, Tremont, SPM, and Banc of America each contends that all or portions of its Executive Summary and Qualification Questionnaire are excepted from disclosure under section 552.110 of the Government Code. 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. With respect to the trade secret prong of section 552.110, we note that the Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), cert. denied, 358 U.S. 898 (1958); see also Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is:

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). 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. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>4</sup> This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must 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 argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990).

A third party raising the commercial and financial information prong of section 552.110 must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure of its information. Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999).

CAMG contends that its information is excepted from disclosure under section 552.110(b) of the Government Code. CAMG explains that it is a private global investment firm that organizes investors and makes investments on their behalf. CAMG further explains that the alternative asset investment market in which it competes is extremely competitive and the information at issue is extremely sensitive. In sum, CAMG argues that release of its information would allow a competitor access to various aspects of its business, which a competitor could then use "for direct and substantial competitive advantage." However, while CAMG has generally alleged that release of its information would cause it substantial

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<sup>4</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 others 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).

competitive harm, it has not provided a specific factual or evidentiary showing that such harm would result from the release of its information. Therefore, we find that CAMG has not adequately demonstrated that its information is excepted from disclosure under section 552.110(b) of the Government Code, and the comptroller must release CAMG's Executive Summary and Qualification Questionnaire in full.

Banc of America also contends that portions of its Executive Summary and Qualification Questionnaire are excepted from disclosure under section 552.110(b). Banc of America contends that release of information responsive to Questions 12, 14, 16, 20, and 44 on the Qualification Questionnaire and the portion of the Executive Summary duplicative of the response to Question 44 could give its competitors a substantial competitive advantage by revealing extensive information about its business strategy, products, and performance and allowing its competitors to tailor their own business strategy to take advantage of those areas where Banc of America is relatively weak and lure away Banc of America's existing or potential customers. Based on Banc of America's arguments and our review of the submitted information, we find that Banc of America has adequately demonstrated that the release of the information responsive to Questions 12, 14, 16, 20, and 44 on the Qualification Questionnaire and the portion of the Executive Summary that restates the information responsive to Question 44 would cause it substantial competitive harm. Banc of America also contends that the release of the information responsive to Question 10, which details Banc of America's liability insurance coverage, would cause it substantial competitive harm because Banc of America would be more susceptible to litigation than its competitors whose insurance information is not disclosed. We find this allegation too speculative and without a factual or evidentiary basis. Therefore, the comptroller may not withhold the information responsive to Question 10 of Banc of America's Qualification Questionnaire under section 552.110(b). In sum, the comptroller must withhold the portions of Banc of America's Qualification Questionnaire responsive to Questions 12, 14, 16, 20, and 44, as well as the portion of the Executive Summary that restates the information responsive to Question 44. We have marked this information. The comptroller must release the remainder of Banc of America's Qualification Questionnaire and Executive Summary.

Next, Private Advisors contends that its Executive Summary and Qualification Questionnaire are excepted from disclosure under section 552.110 of the Government Code. Private Advisors relies on the previous version of section 552.110, which excepted from disclosure "a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, sec. 552.110, 1993 Tex. Gen. Laws 583, 601. In construing this provision, this office looked to the case of *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which established the standard for applying the correlative exception in the federal Freedom of Information Act ("FOIA"). Open Records Decision No. 639 at 3 (1996). Under the *National Parks* test, commercial or financial information is confidential under Exemption Four of FOIA "if disclosure of the information is likely . . . either . . . (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause

substantial harm to the competitive position of the person from whom the information was obtained.” *Nat’l Parks*, 498 F.2d at 770 (footnote omitted). Seventeen years later, the same court reconsidered the *National Parks* standard in *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993). While reaffirming the two-pronged test set out in its previous ruling for situations in which information was submitted to the government under compulsion, the Court of Appeals for the District of Columbia established a different test for determining whether commercial or financial information is confidential under Exemption Four when information is provided to the government on a voluntary basis. *Critical Mass*, 975 F.2d 879. The court concluded that “financial or commercial information provided to the Government on a voluntary basis is ‘confidential’ for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.” *Id.* Private Advisors relies on the *Critical Mass* test in contending that its information is confidential under section 552.110 of the Government Code.

However, pursuant to a decision by the Third Court of Appeals and a change made to section 552.110 by the Texas Legislature in 1999, this office no longer applies the federal test in determining whether commercial or financial information is excepted from disclosure under section 552.110. *See* Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 7, 1999 Tex. Gen. Laws 4500, 4503; *Birnbaum v. Alliance of American Insurers*, 994 S.W.2d 766 (Tex. App.--Austin 1999, *pet. denied*). Section 552.110(b) now expressly states the standard to be applied to commercial and financial information and requires that the third party whose information is at issue make a specific factual or evidentiary showing that disclosure of its information would likely result in substantial competitive injury to itself. *See* Gov’t Code § 552.110(b); Open Records Decision No. 661 at 5-6 (1999). Because Private Advisors does not demonstrate how the release of its information would cause it substantial competitive harm, we find that the comptroller may not withhold Private Advisors’ Executive Summary and Qualification Questionnaire under section 552.110, but must release this information in full.

Tremont contends that portions of its Qualification Questionnaire are excepted from disclosure under section 552.110(a) as trade secrets. Tremont indicates that it has developed proprietary internal processes and procedures relating to its selecting and monitoring hedge funds and hedge fund managers and developing client specific portfolios. Tremont contends that these processes and procedures constitute trade secrets. According to Tremont, its employees are prohibited from publicly disclosing Tremont’s proprietary information. Tremont further contends that “[i]f other members of the industry were to have access to the intricacies and nuances of Tremont’s . . . business practices, it is conceivable that the competitive advantage that Tremont has built would be in jeopardy.” However, Tremont has not made a *prima facie* showing that any portion of its Qualification Questionnaire constitutes a trade secret and is therefore excepted under section 552.110(a) of the Government Code. Consequently, the comptroller must release Tremont’s Executive Summary and Qualification Questionnaire in their entirety.

SPM contends that its Executive Summary and Qualification Questionnaire are excepted under both prongs of section 552.110 of the Government Code. We first address SPM's argument under the commercial or financial information prong of section 552.110. SPM contends that release of its Executive Summary would cause it substantial competitive harm because it reveals details about its investment strategies that could be copied by competitors. However, upon review of the Executive Summary portion of the SPM proposal, we find that it does not contain any information about SPM's investment strategies. Therefore, the Executive Summary may not be withheld under section 552.110(b). SPM also contends that the release of the answers to Questions 7, 15, 20, 24, 42, 43, 47, 48, 49, and 57 of its Qualification Questionnaire would cause it substantial competitive harm. According to SPM, release of its responses to Questions 7, 20, 24, 43, 48, and 49 would allow competitors access to detailed information about its ownership structure, products, investment philosophy, and investment strategy. SPM indicates that competitors could use this information to duplicate SPM's ownership structure, products, investment philosophy, and investment strategy and thus damage the unique quality of SPM's product and undercut SPM in the marketplace. Based on SPM's arguments and our review of the submitted information, we find that SPM has adequately demonstrated that the release of its answers to Questions 7, 20, 24, 43, 48, and 49 in its Qualification Questionnaire would cause it substantial competitive harm. SPM also contends that release of the answers to Questions 42 and 57 would cause it substantial competitive harm by revealing information about the liquidity risk SPM is willing to undertake, the level of performance SPM anticipates from its fund, and past return information on its fund. However, SPM does not explain how revealing this information to a competitor would cause it substantial competitive harm. Therefore, the comptroller may not withhold the answers to Questions 42 and 57 under section 552.110(b). SPM also argues that release of the answers to Questions 15 and 47 would cause it substantial competitive harm by revealing information about its personnel compensation methods and risk reduction strategies that competitors could duplicate. However, the submitted information does not reflect, nor does SPM sufficiently explain, how the answers to Questions 15 and 47 reveal the information that SPM contends could be harmful if duplicated. Therefore, we find that SPM has failed to demonstrate how the release of the answers to Questions 15 and 47 would cause it substantial competitive harm. Consequently, while the comptroller must withhold the answers to Questions 7, 20, 24, 43, 48, and 49 of SPM's Qualification Questionnaire under section 552.110(b) of the Government Code, the comptroller may not withhold any of the remaining information in SPM's Executive Summary or Qualification Questionnaire under section 552.110(b).

With respect to the remainder of the information in SPM's Executive Summary and Qualification Questionnaire, we next address SPM's argument under section 552.110(a). SPM contends that all of the information in its Executive Summary and Qualification Questionnaire constitutes a trade secret. Specifically, SPM contends that its information is (1) not generally known to the public, (2) known by most if its limited number of employees, (3) guarded amongst its investors, (4) extremely valuable to SPM and its competitors, (5) the result of significant investment of money, and (6) not easily duplicated by SPM's

competitors. Although SPM generally contends that the information in its Executive Summary and Qualification Questionnaire are trade secrets and touches upon each of the six trade secret factors, we find that SPM has not sufficiently demonstrated that any specific portion of its Executive Summary and Qualification Questionnaire consists of a trade secret. Open Records Decision Nos. 552 (1990) (“The determination of whether any particular information is a trade secret under Texas law is a fact question.”), 541 (1990) (specific items in contract not protected as trade secrets where entity failed to provide precise explanations of the relative commercial value of those specific items). Therefore, we find that the comptroller may not withhold the remainder of SPM’s Executive Summary and Qualification Questionnaire under section 552.110(a), but must release the information.

In summary, the comptroller may withhold the submitted e-mails we have marked under section 552.107 of the Government Code. The comptroller may also withhold a portion of one of the e-mails, which we have marked, under section 552.111 of the Government Code. The comptroller must withhold the marked e-mail addresses contained in Arden’s responsive information under section 552.137 of the Government Code. The comptroller must also withhold the portions of Banc of America’s and SPM’s responsive information that we have marked under section 552.110(b). The comptroller must release the remainder of the responsive information.

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

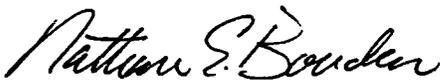
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 176465

Enc: Submitted documents

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