



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2006-11098

Dear Ms. Chang:

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# 260111.

The City of Houston (the "city") received a request for a monthly report for all the parking facilities that pay the six percent gross receipts tax. You state that the requested information may be exempted from disclosure under sections 552.101, 552.104, 552.110, 552.113, 552.128, and 552.131 of the Government Code, but you make no arguments regarding these exceptions. However, you represent that, pursuant to section 552.305 of the Government Code, the city has notified the interested third parties Parking Spot d/b/a PRG Parking Houston, L.P.; Airpark d/b/a Ace Parking Management, Inc.; Allright and Service Park d/b/a Allright Parking of Texas, Inc.; Park n Fly d/b/a Park n Fly of Texas, Inc.; Xpress Park Houston; Sylan, Inc. d/b/a Ace Park N Ride ("Ace"); Dollar Rent-a-Car and Thrifty Rent a Car d/b/a DTG Operations, Inc.; Preflight Airport Park d/b/a Express Auto Park; AMPCO Jet Park d/b/a Jet Park; Park-N-Go d/b/a Sun Park ("Sun Park"); and E-Z Rent a Car of the request for information and of their right to submit comments to this office. 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 that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information. We have also received and considered arguments submitted by Ace and Sun Park..

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 id.* § 552.305(d)(2)(B). As of the date of this decision, Parking Spot d/b/a PRG Parking Houston, L.P.; Airpark d/b/a Ace Parking Management, Inc.; Allright and Service Park d/b/a Allright Parking of Texas, Inc.; Park n Fly d/b/a Park n Fly of Texas, Inc.; Xpress Park Houston; Dollar Rent-a-Car and Thrifty Rent a Car d/b/a DTG Operations, Inc.; Preflight Airport Park d/b/a Express Auto Park; AMPCO Jet Park d/b/a Jet Park; and E-Z Rent a Car have not submitted to this office any reasons explaining why their information should not be released. Therefore, none of these interested third parties have provided us with any basis to conclude that they have a protected proprietary interest in any of the submitted information. *See, e.g., id.* § 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, we conclude that the city may not withhold any portion of the submitted information based on the proprietary interests of Parking Spot d/b/a PRG Parking Houston, L.P.; Airpark d/b/a Ace Parking Management, Inc.; Allright and Service Park d/b/a Allright Parking of Texas, Inc.; Park n Fly d/b/a Park n Fly of Texas, Inc.; Xpress Park Houston; Dollar Rent-a-Car and Thrifty Rent a Car d/b/a DTG Operations, Inc.; Preflight Airport Park d/b/a Express Auto Park; AMPCO Jet Park d/b/a Jet Park; and E-Z Rent a Car.

Ace and Sun Park claim that the submitted information is excepted under section 552.110 of the Government Code. 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 [one] 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). 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 party’s claim for exception as valid under that component if that party establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law.¹ *See* Open Records Decision No. 552 at 5 (1990). The private party must provide information that is sufficient to enable this office to conclude that the information at issue qualifies as a trade secret under section 552.110(a). *See* Open Records Decision No. 402 at 3 (1983).

Section 552.110(b) excepts from disclosure “[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.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999).

Upon review of the arguments submitted by Ace and Sun Park and the information at issue, we find that both Ace and Sun Park have failed to demonstrate how the revenue data meets the definition of a trade secret under section 552.110(a) of the Government Code. Furthermore, Sun Park does not explain how release of the requested revenue data would cause its company substantial competitive harm for the purposes of section 552.110(b) of the Government Code. *See generally* Gov’t Code § 552.022(a)(3) (terms of contract with governmental body are generally not excepted from public disclosure); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110(b), business must show by specific factual evidence that substantial competitive injury would result from release of the particular information at issue). Thus, the city may not withhold the revenue data under section 552.110 of the Government Code.

¹The 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).

Sun Park further contends that the revenue data is excepted under section 552.131 of the Government Code. Section 552.131(a) provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

- (1) a trade secret of the business prospect; or
- (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.

Gov't Code § 552.131(a). Sun Park does not explain, nor does the submitted document reflect, that the city is negotiating with Sun Park or any other party to locate, stay, or expand in or near the airport. Moreover, we have already determined that the revenue statement may not be withheld as Sun Park's proprietary commercial or financial information under section 552.110(b). Thus, we find that section 552.131 does not apply in this instance. The city must release the submitted information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

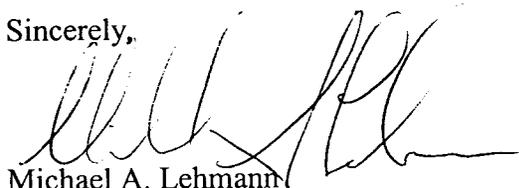
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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 Office of the Attorney General 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,



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/ir

Ref: ID# 260111

Enc. Submitted documents

c: Mr. Paul Blackshear
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(w/o enclosures)