



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2006

Mr. James G. Nolan
Open Records Counsel
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2006-11823

Dear Mr. Nolan:

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# 260163.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for copies of all proposals received in response to RFP 175j-Comptroller of Public Accounts, and related bid evaluation materials. You state that you will release information responsive to all parts of the request, except for portions of the responding vendors' proposals. You claim that some of the submitted information is excepted from disclosure under sections 552.136, 552.139 and 552.147 of the Government Code. You also indicate that release of the requested proposals may implicate the proprietary interests of the following third parties: OSI Collection Services, Inc. ("OSI"); Universal Fidelity L.P. ("Universal"); NCO Financial Systems, Inc. ("NCO"); LTD Financial Services, L.P. ("LTD"); Transworld Systems, Inc. ("Transworld"); The CMI Group ("CMI"); IRMC-Allied Interstate ("IRMC"); Nationwide Recovery Systems, Ltd. ("Nationwide"); Municipal Services Bureau ("MSB"); and McCreary, Veselka, Bragg & Allen, P.C. ("McCreary"). Pursuant to section 552.305 of the Government Code, you were required to notify the interested third parties of the request and of their right to submit arguments to this office as to why the information should not be released. 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 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.

Initially, we note that you have not submitted for our review Transworld's proposal. We therefore assume you have released such information to the extent that it existed when the comptroller received the request. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the following companies have not submitted comments explaining why their information should be withheld from disclosure: Universal; NCO; LTD; Transworld; IRMC; Nationwide; MSB; and McCreary. Thus, these companies have not demonstrated that any of their information is proprietary for purposes of the Act. *See id.* § 552.110; 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 (1990). Accordingly, the comptroller may not withhold any of the submitted information on the basis of any proprietary interests that these companies may have in the information.

We next address the submitted arguments. Both CMI and OSI argue that portions of their submitted information are confidential pursuant to 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* Gov't Code § 552.110(a), (b). Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A "trade secret"

may consist of 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 single or ephemeral events in the conduct of the

business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (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 No. 232. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552. 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. 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, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661.

CMI claims that its client list and other details of its practices constitute trade secret information under section 552.110(a). OSI also claims that its client reference list constitutes trade secret information. Upon review of the submitted information, we agree that some of CMI's information relating to its unique resources, employee training, and quality assurance programs constitutes trade secret information. Additionally, CMI and OSI have both made a *prima facie* case that their client information is protected as trade secret information. Accordingly, the comptroller must withhold this information, which we have marked, pursuant to section 552.110(a) of the Government Code.

Both companies also assert that their financial statements are excepted from disclosure under section 552.110(b). We find, however, that CMI and OSI have only made general assertions that the release of their financial statements would result in competitive harm. Therefore, both companies have failed to meet their burden under section 552.110(b) with respect to this information. See Open Records Decision No. 661. Accordingly, the comptroller may not withhold any portion of CMI's or OSI's submitted financial statements under section 552.110(b).

Next, we address the comptroller's claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. We agree that you must withhold the insurance policy numbers you have marked, as well as the additional insurance policy numbers we have marked, under section 552.136. However, we find that you have failed to explain how the surety bond numbers you have marked constitute access device numbers for purposes of section 552.136. Thus, with the exception of the surety bond numbers, which we have marked for release, the comptroller must withhold the marked information under section 552.136.

You also generally raise section 552.139(a) of the Government Code for some of the submitted information. Section 552.139(a) provides as follows:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Upon review, however, we find that you have not provided any arguments demonstrating that any of the submitted information relates to computer network security or to the design, operation, or defense of a computer network, nor have you identified any of the information to which this exception might apply. *See id.* §§ 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception), 552.301(e)(2) (requiring the governmental body to “label the submitted information to indicate which exceptions apply to which parts of the copy”). Accordingly, the comptroller may not withhold any of the submitted information under section 552.139. *Id.*

Finally, section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Accordingly, the comptroller must withhold the social security numbers you have marked under section 552.147.¹

In summary, the comptroller must withhold the following information: (1) the client reference information we have marked under section 552.110(a) of the Government Code; (2) the marked information under section 552.136 of the Government Code, with the exception of the surety bond numbers we have marked for release; and (3) the marked social security numbers under section 552.147 of the Government Code. The remaining 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

¹ We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

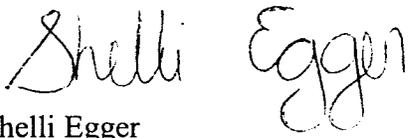
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 260163

Enc. Submitted documents

c: Ms. Jeanna Reed
Pioneer Cost Recovery, Inc.
P.O. Box 100
Arcade, New York 41009
(w/enclosure)

Mr. Jeff Smith
OSI Collection Services, Inc.
800 Wilcrest, Suite 300
Houston, Texas 77042
(w/enclosure)

Mr. Ken Sebek
Universal Fidelity, LP
1445 Langham Creek Drive
Houston, Texas 77084
(w/enclosure)

Mr. Brent Brown
NCO Financial Systems, Inc.
507 Prudential Road
Horsham, Pennsylvania 19044
(w/enclosure)

Ms. Jamie Campisi
LTD Financial Services, LP
7322 Southwest Freeway, Suite 1600
Houston, Texas 77074
(w/enclosure)

Mr. Pete Castillo
Transworld Systems, Inc
11503 Jones-Maltsberger, Suite 102
San Antonio, Texas 78216
(w/enclosure)

Mr. Kelly Wagamott
The CMI Group
4200 International Parkway
Carrollton, Texas 75007
(w/enclosure)

Mr. Fred Lundquist
IRMC-Allied Interstate
800 Interchange West
455 Ford Road
Minneapolis, Minnesota 55426-1096
(w/enclosure)

Mr. Harvey M. Allen
McCreary, Veselka, Bragg & Allen, P.C.
5929 Balcones Drive, Suite 200
Austin, Texas 78731
(w/enclosure)

Mr. Dennis C. Dlabaj
Nationwide Recovery Systems
2304 Tarpley Road, Suite 134
Carrollton, Texas 75006
(w/enclosure)

Mr. Thomas M. Giamboi
Municipal Services Bureau
6505 Airport Boulevard, Suite 100
Austin, Texas 78752-3614
(w/enclosure)