



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2008

Ms. Andrea Sheehan  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2008-10115

Dear Ms. Sheehan:

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# 319375.

The Region 10 Education Service Center ("Region 10"), which you represent, received a request for the bid tabulation and responses to RFP # 2008-10 Regional School Mass Communication System. You state that some of the requested information will be released. You do not take a position as to whether the submitted information is excepted under the Act; however, you state, and provide documentation showing, that you notified the following companies of Region 10's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released: AlertNow; Blackboard Connect, Inc.; BroadBlast, Inc.; MIR3, Inc.; Roam Secure, Inc. dba Cooper Notification; SchoolReach Instant Parent Contact; and TeleParent. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* TeleParent asserts that pages 13-15 of its proposal are excepted under sections 552.110 and 552.131 of the Government Code.<sup>1</sup> We have reviewed the submitted arguments and information.

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<sup>1</sup>Although TeleParent asserts that the information at issue is excepted under section 552.113 of the Government Code, which pertains to certain geological and geophysical information, we understand TeleParent to assert section 552.131 of the Government Code instead.

Initially, you indicate that the request for information was withdrawn by operation of law because Region 10 sent the requestor a cost estimate pertaining to his request for information on June 13, 2008, and as of July 18, 2008, it has not received a response from the requestor. See Gov't Code §§ 552.2615(a), 552.263(f). However, we have examined the cost estimate upon which your representation is based and have determined that it does not comply with the provisions of section 552.2615 of the Act because you did not inform the requestor that he could make a complaint to our office alleging that he has been overcharged. See *id.* § 552.2615. Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law. We will, therefore, address whether the submitted information is excepted from disclosure under the Act.

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 it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, AlertNow, Blackboard Connect, Inc., BroadBlast, Inc., MIR3, Inc., Roam Secure, Inc. dba Cooper Notification, and SchoolReach Instant Parent Contact have not submitted to this office any reasons explaining why their requested information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of these third parties, and Region 10 may not withhold the submitted information on that basis. See 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.

TeleParent asserts that pages 13-15 of its proposal are excepted under section 552.110(a) of the Government Code. Section 552.110(a) excepts from disclosure "[a] trade secret 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 section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); see also ORD 552 at 2. 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); *see also Huffines*, 314 S.W.2d at 776. 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.<sup>2</sup> Restatement of Torts § 757 cmt. b. 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. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) applies 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)*.

Having considered TeleParent's arguments and reviewed the information at issue, we find that TeleParent has not shown that any of the information on pages 13-15 of its proposal meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. We also find that TeleParent has made only conclusory allegations that release of the information at issue would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. Thus, none of the information at issue may be withheld pursuant to section 552.110.

TeleParent also asserts that its information is excepted under section 552.131 of the Government Code. Section 552.131 provides that certain economic development information is excepted from disclosure. *See Gov't Code § 552.131(a)*. TeleParent, however, has not provided any arguments explaining the applicability of section 552.131 to the submitted proposals; therefore, we find TeleParent has failed to establish that any of the submitted information is excepted under that section.

Finally, we note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception

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<sup>2</sup>The following are the six factors that the Restatement gives 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 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; *see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980)*.

applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Thus, Region 10 must release the submitted information, but any copyrighted information may only be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

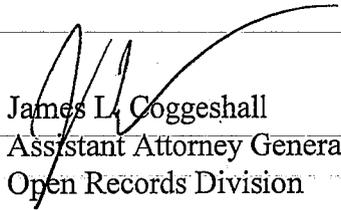
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ma

Ref: ID# 319375

Enc. Submitted documents

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