



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2009

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Box 619428  
DFW Airport, Texas 75261-9428

OR2009-01897

Dear Ms. Constantine:

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# 334765.

The Dallas/Fort Worth International Airport Board (the "board") received a request for two specified proposals. You state you have released the portions of the information that third parties do not claim are proprietary. Although the board takes no position on whether the submitted information is excepted from disclosure, you state the release of this information may implicate the proprietary rights of certain third parties. Accordingly, you inform us you notified JBT AeroTech<sup>1</sup> ("JBT") and Meridian Management Corporation ("Meridian") of the request and of their rights to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.301(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 received and considered comments from JBT and Meridian and reviewed the submitted information.

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<sup>1</sup>We note at the time the proposal was submitted to the board, JBT was operating under the name FMC Technologies, Inc.

JBT argues portions of its proposal are excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Although JBT raises section 552.101, the company has not referred us to, nor are we aware of, any law that would make the specific portions of the company's proposal confidential under section 552.101. Therefore, no portion of the submitted information may be withheld under section 552.101 of the Government Code.

JBT also asserts that portions of its proposal are excepted under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104. Section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the board does not raise section 552.104, this section is not applicable to the submitted information. ORD 592 (section 552.104 may be waived by governmental body).

JBT and Meridian each assert portions of their proposals are subject to section 552.110 of the Government Code. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code § 552.110(a). 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. 1957); *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); *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 (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. 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). Information pertaining to a specific contract with a governmental body is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982).

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.* § 552.110(b); *see also* Open Records Decision No. 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

JBT argues its operational approach, references, contractor qualification statement, pricing information, organizational chart, training methods, and annual and monthly reporting methods are trade secrets under section 552.110(a). Upon review, we agree JBT's customer information is a trade secret under section 552.110(a). Therefore, the board must withhold the customer information we have marked under section 552.110(a) as a trade secret. However, we note JBT has made the identities of some of its customers, which it seeks to withhold, publicly available on its website. Thus, JBT has failed to demonstrate the information published on its website is a trade secret. Further, JBT has not demonstrated how the remaining information at issue meets the definition of a trade secret. *See* ORD 552 at 5 (party must establish *prima facie* case that information is a trade secret). Accordingly,

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<sup>2</sup>The 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).

the board may not withhold any of the remaining information in JBT's proposal under section 552.110(a).

BT and Meridian both claim their information at issue is subject to section 552.110(b). Upon review, we find Meridian has demonstrated release of its pricing information would cause it specific competitive harm; therefore, the board must withhold the pricing information we have marked under section 552.110(b) of the Government Code. As noted above, JBT published the identities of some of its customers on its website. Thus, JBT failed to demonstrate release of this information would cause it substantial competitive harm. Additionally, upon review of JBT's and Meridian's remaining arguments, we find each company has provided conclusory arguments that release of their remaining information would result in substantial competitive harm to their companies. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). We note the pricing information of a winning bidder, such as JBT in this instance, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, the board may not withhold any portion of the remaining information under section 552.110(b).

In summary, the board must withhold the information we have marked in JBT's submitted information under section 552.110(a) and the pricing information we have marked in Meridian's proposal under section 552.110(b). The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
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Open Records Division

OM/eeg

Ref: ID# 334765

Enc. Submitted documents

c: Requestor  
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