



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2009-07615

Dear Ms. Fourt:

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# 344854.

Tarrant County (the "county") received a request for proposals submitted by Weaver & Tidwell, L.L.P. ("Weaver") and Deloitte & Touche, L.L.P. ("Deloitte") in response to a specified request for proposals.¹ You indicate you have released some information to the requestor. You do not take a position as to whether the remaining requested information is excepted under the Act; however, you state, and provide documentation showing, that you notified Weaver and Deloitte of the county's receipt of the request for information and of the companies' rights to submit arguments to this office as to why the requested information should not be released to the requestor. *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). We have received correspondence from

¹You note the requestor narrowed her request on March 31, 2009, withdrawing her request for the proposals submitted by Clifton Gunderson, L.L.P., Reznick Group, P.C., and Berry, Dunn, McNeil & Parker, therefore, the submitted information pertaining to these companies is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the county is not required to release this information in response to this request.

Weaver and Deloitte. See Gov't Code § 552.305. We have considered the submitted arguments and reviewed the submitted information.

Deloitte claims a portion of its information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Deloitte claims the telephone number of its authorized representative is private. However, we find Deloitte has failed to explain how the telephone number at issue constitutes highly intimate or embarrassing information that is not of legitimate public interest. Therefore, the county may not withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Weaver and Deloitte claim exceptions to disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties with respect to 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." 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 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, 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 [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 776 (Tex. 1958). If a governmental body takes no position on the applicability of the “trade secrets” aspect of section 552.110 to the information at issue, this office will accept a private person’s claim for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law.² *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information at issue 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).

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 information at issue. *See* Open Records Decision No., 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Weaver claims its financial statement is excepted from public disclosure under section 552.110. Upon review, we conclude that Weaver has failed to demonstrate that any portion of its financial statement meets the definition of a trade secret, nor has it

²The 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).

demonstrated the necessary factors to establish a trade secret claim for this information. Furthermore, Weaver provides no arguments explaining how the release of this information would cause it substantial competitive harm. Thus, we find Weaver has not demonstrated substantial competitive injury would result from the release of the information at issue. See Open Records Decision No. 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). Accordingly, the county may not withhold Weaver's financial statement under section 552.110 of the Government Code.

Deloitte claims section 552.110(a) for portions of its information. Having considered Deloitte's arguments, we conclude Deloitte has established a *prima facie* case that its customer list, which we have marked, constitutes trade secret information. Therefore, the county must withhold the information we have marked pursuant to section 552.110(a) of the Government Code. However, we conclude that Deloitte has failed to demonstrate any portion of its remaining information constitutes a trade secret. This office has ruled in several formal decisions that information relating to a company's organization and the qualifications and experience of its employees is not protected by section 552.110(a). See, e.g., Open Records Decision Nos. 319 (1982); 306 (1982). Accordingly, the county may not withhold the remaining information under section 552.110(a). Deloitte also argues section 552.110(b) for some of its remaining information. Upon review, we determine that Deloitte has demonstrated, based on a specific or factual evidentiary showing, that the release of some of its information would result in substantial competitive harm. Accordingly, we have marked the information that must be withheld under section 552.110(b). Upon review of Deloitte's remaining arguments, we find it has made only conclusory allegations that release of its information would result in substantial damage to its competitive position. See ORD 661. Consequently, none of the remaining information may be withheld under section 552.110(b) of the Government Code.

We note that the submitted information contains insurance policy numbers. Section 552.136 of the Government Code 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. Accordingly, the county must withhold the insurance policy numbers we have marked under section 552.136.

In summary, the county must withhold the information we have marked under sections 552.110(a) and 552.110(b) of the Government Code. The insurance policy numbers we have marked must be withheld under section 552.136 of the Government Code. 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/rl

Ref: ID# 344854

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Paul Parette
Deloitte & Touche, L.L.P.
2200 Ross Avenue, Suite 1600
Dallas, Texas 75201
(w/o enclosures)

Ms. Alyssa G. Martin
Weaver & Tidwell, L.L.P.
1600 West Seventh Street
Fort Worth, Texas 76102
(w/o enclosures)