



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

~~September 3, 2009~~

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-12495

Dear Ms. Chatterjee:

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# 354467.

The University of Texas at Austin (the "university") received a request for a copy of the full bid package submitted by Sisk-Robb, Inc. ("Sisk-Robb") and a copy of the Project Management & Construction Services Evaluation Matrix prepared by the university for all submitted bidders in reference to a specified request for proposals. You state the university has released the requested evaluation matrix to the requestor. You also state you have marked social security numbers within the submitted information that will be redacted pursuant to section 552.147 of the Government Code.¹ Although you raise no exceptions to disclosure of the submitted information, you state release of this information may implicate the proprietary interests of Sisk-Robb. Thus, pursuant to section 552.305 of the Government Code, you have notified Sisk-Robb of the request and of its right to submit arguments to this office as to why its information should not be released. *See id.* § 552.305(d); *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 under in certain circumstances). We have received arguments

¹Section 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.

from Sisk-Robb. We have considered the submitted arguments and reviewed the submitted information.

Sisk-Robb asserts portions of its proposal are excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. See Open Records Decision No. 592 (1991). As the university does not raise section 552.104, this section is not applicable to the requested information. *Id.* (section 552.104 may be waived by governmental body). Therefore, none of the submitted information may be withheld under section 552.104 of the Government Code.

Sisk-Robb also raises section 552.110 of the Government Code for portions of its information. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (a) trade secrets; and (b) commercial or financial information, the release of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110(a), (b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 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 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.² 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).

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 Open Records Decision 661 at 5 (1999).

After reviewing the information at issue and the submitted arguments, we find Sisk-Robb has made a *prima facie* case that its customer information and hourly wage determination formula, which we have marked, are protected as trade secret information. Therefore, the university must withhold the marked information under section 552.110(a). We determine, however, that Sisk-Robb has failed to demonstrate that information detailing the beginning and ending dates of its contracts meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. Therefore, no portion of the remaining information may be withheld under section 552.110(a) of the Government Code.

Furthermore, we find Sisk-Robb has made only conclusory allegations that release of the remaining information at issue would result in substantial harm to its competitive position. Thus, Sisk-Robb has not demonstrated that substantial competitive injury would result from the release of the remaining information. See ORD 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). Therefore, the university may not withhold any portion of the remaining information under section 552.110(b) of the Government Code.

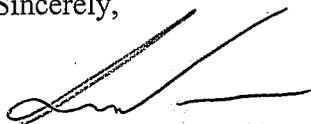
²The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of the company; (2) the extent to which it is known by employees and others involved in the company’s business; (3) the 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 (1939); see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

In summary, the university must withhold the information we have marked under section 552.110(a) of the Government Code. The remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 354467

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Mr. Jimmy Stafford
Sisk-Robb, Inc.
1110 Leander Drive
Leander, Texas 78641
(w/o enclosures)