



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2009

Ms. Jakki A. Hansen  
Assistant General Counsel  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2009-12956

Dear Ms. Hansen:

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# 355124 (MTA No. 2009-0207).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for the most recent winning right-of-way acquisition proposal. You state that METRO takes no position on the public availability of the requested information. You believe, however, that the submitted information may implicate the proprietary interests of Briggs Field Services, Inc. ("Briggs") and Contract Land Staff, Inc. ("CLS"). You state that Briggs and CLS were notified of this request for information and of their right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We received correspondence from an attorney for CLS. We have considered CLS's arguments and reviewed the information you submitted.

We note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

correspondence from Briggs. Therefore, because Briggs has not demonstrated that any of the submitted information is proprietary for the purposes of the Act, METRO may not withhold any of Briggs's information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

CLS claims sections 552.104 and 552.110 of the Government Code for portions of its proposal. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the competitive interests of governmental bodies such as METRO, not the proprietary interests of private parties such as CLS. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, METRO does not claim an exception to disclosure under section 552.104. Therefore, METRO may not withhold any of the submitted information under section 552.104 of the Government Code.

Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "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 Supreme Court of Texas 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) (emphasis added); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). 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.<sup>2</sup> *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. *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* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

CLS contends that parts of its proposal, including customer information, constitute trade secrets under section 552.110(a). CLS also contends that other portions of its proposal are excepted from disclosure under section 552.110(b). Having considered CLS's arguments and reviewed the information at issue, we have marked customer information that METRO must withhold under section 552.110(a). Although CLS also seeks to withhold other customer information under section 552.110, we note that the identities of those customers are published on an Internet website. We are unable to conclude that information that has been published on the Internet constitutes a trade secret or that the release of such information under the Act would cause substantial competitive harm. We find that CLS has not demonstrated that any of the remaining information at issue constitutes a trade secret of the company under section 552.110(a). We also find that CLS has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information at issue would cause substantial competitive harm. We therefore conclude that METRO may not withhold any of the remaining information under section 552.110. *See* Gov't Code § 552.110(a)-(b); *see also* Open Records Decision Nos. 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 was entirely too speculative), 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and

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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* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

personnel, market studies, professional references, qualifications and experience, and pricing).

In summary, METRO must withhold the marked information in CLS's proposal under section 552.110 of the Government Code. The rest of the submitted 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, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 355124

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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