



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi, Legal Department
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-15043

Dear Mr. Bounds:

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# 359161.

The City of Corpus Christi (the "city") received three requests for information related to proposals for the reuse or redevelopment of the Memorial Coliseum. You indicate that the city has released some responsive information to the requestors. Although the city takes no position on release of the submitted information, you explain that this information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified The NRP Group, LLC, ("NRP") and Brass Real Estate Funds/Brass Administrators, LLC, ("Brass") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered comments received from NRP and have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice 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, we have not received any correspondence from Brass. Thus, Brass has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 (1990). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest Brass may have in it. As the city also raises no objections against release of Brass's information, the city must release that information.

NRP asserts that the submitted portion of its proposal is excepted from required public disclosure by section 552.110 of the Government Code, which 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) "[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(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 a single or ephemeral event 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 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.¹ ORD

¹The 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 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;

552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless the party claiming this exception has shown that the information at issue meets the definition of a trade secret and has demonstrated the necessary factors 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).

NRP explains that it is a privately-held company and that its financial information is not otherwise publicly available. NRP argues that release of its financial information would, accordingly, allow its competitors to imitate NRP's financial structure and gain an unfair competitive advantage. Upon review of NRP's arguments and the information at issue, we conclude that NRP has provided a specific factual or evidentiary showing to support its allegation that release of portions of its information would cause the company substantial competitive injury. Accordingly the city must withhold the portions of NRP's information that we have marked under section 552.110(b) of the Government Code.

However, we find that NRP has failed to establish a *prima facie* case that any of its remaining information is a trade secret protected by section 552.110(a). *See* ORD 402. Furthermore, NRP has made only conclusory allegations that release of its remaining information would cause the company substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. Therefore, the city may not withhold any of NRP's remaining information under section 552.110. As neither the city nor NRP raise any further arguments against disclosure, the city must release the remainder of NRP's information.

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

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- (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.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 359161

Enc: Submitted documents

cc: Requestors (3)
(w/o enclosures)

c: Ms. Jaime French
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