



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 27, 2009

Mr. Mark Booker  
Director of Purchasing  
Garland Independent School District  
P.O. Box 469026  
Garland, Texas 75046-9026

OR2009-15258

Dear Mr. Booker:

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# 359520.

The Garland Independent School District (the "district") received a request for seven categories of information pertaining to the most recent solicitation for facilities services.<sup>1</sup> You state the district will provide most of the requested information to the requestor. Although you state the district takes no position with respect to the public availability of the submitted bid proposal, you indicate its release may implicate the proprietary interests of Southeast Service Corporation d/b/a SSC Service Solutions ("SSC"). Accordingly, you state, and have provided documentation showing, you notified SSC of the request and of the

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<sup>1</sup>You state the district sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). We note the clarification included a withdrawal of the requestor's request for certain budget information.

company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered comments from SSC and reviewed the submitted information.

SSC claims portions of its submitted proposal are excepted from disclosure under section 552.110 of the Government Code. This section protects the proprietary interests of private parties by excepting from disclosure 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).

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 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 that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the

definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.<sup>2</sup> Open Records Decision No. 402 (1983).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); 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).

SSC claims some of its information, including customer and training information, constitutes trade secrets under section 552.110(a). Upon review, we find SSC has established some of its customer information, which we have marked, constitutes a trade secret and must be withheld under section 552.110(a). We note, however, that SSC has made the remainder of its customer information it seeks to withhold publicly available on its website. Because SSC published this customer information, we conclude SSC has failed to demonstrate it considers this information to be trade secret information. Furthermore, we find SSC has not demonstrated how the remaining information it seeks to withhold meets the definition of a trade secret. Consequently, the district may not withhold any of the remaining information under section 552.110(a) of the Government Code.

SSC also claims the remaining information it seeks to withhold, including pricing, training, quality assurance, and employee benefit information, constitutes commercial information that, if released, would cause substantial competitive harm to the company. After reviewing SSC's arguments and the information at issue, we find SSC has established release of its pricing information would cause it substantial competitive injury. Therefore, the district must withhold this information, which we have marked, under section 552.110(b). We find, however, that SSC has provided no specific factual or evidentiary showing release of its remaining information at issue would cause it substantial competitive injury. *See* Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel,

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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 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).

professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Therefore, the district may not withhold any of the remaining information SSC seeks to withhold under section 552.110(b).

We note the remaining information contains insurance policy numbers. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.<sup>3</sup>

Gov't Code § 552.136. We conclude the insurance policy numbers we have marked constitute access device numbers for purposes of section 552.136. Thus, the district must withhold the marked insurance policy numbers under section 552.136 of the Government Code.

In summary, the district must withhold the marked customer information under section 552.110(a) of the Government Code, the marked pricing information under section 552.110(b) of the Government Code, and the marked insurance policy numbers 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.

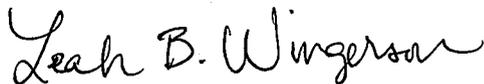
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 359520

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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