



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2009

Ms. Caroline E. Cho  
Assistant County Attorney  
Williamson County  
Martin Luther King Street, Box 7  
Georgetown, Texas 78626

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2009-15816

Dear Ms. Cho:

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# 360605.

Williamson County (the "county") received a request for the sequentially numbered tickets showing the individual loads of solid-waste-disposal events at the Williamson County Landfill for July 14, 2009. We understand you have released the tickets of customers who neither have a contract with Waste Management of Texas, Incorporated ("WMTI") nor have negotiated rates different from the posted gate rate for disposal. Although you take no position as to the public availability of the submitted tickets, you state their release may implicate the proprietary interests of WMTI. Thus, pursuant to section 552.305 of the Government Code, you notified WMTI of the request and of the corporation's right to submit arguments to this office as to why its information should not be released. Gov't Code § 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 certain circumstances). We have also received comments submitted by the requestor. *See id.* § 552.304 (providing that an interested third party may submit comments stating why information should or should

not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

You acknowledge, and we agree, that the county failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third-party WMI claims an interest in the submitted information, we will consider its arguments against disclosure.

WMI asserts the customer identities, quantities of waste, and rates and fees charged in the submitted tickets are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 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.” *See* 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

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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* ORD 552 at 5. 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, 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).

Although WMI asserts the waste quantities in the submitted tickets are excepted by section 552.110, WMI has not explained how it possesses a proprietary interest in the amount of waste a customer decides to bring for disposal on a given day. Thus, because WMI has not shown how this information is proprietary to WMI, we conclude the quantity of waste information in the submitted tickets may not be withheld under section 552.110.

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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).

WMI also contends the customer identities in the submitted tickets are trade secrets protected by section 552.110(a). WMI states its customers' names are not published outside the company, and that its customers' identities are only provided to employees within WMI on a need-to-know basis. WMI further explains the company only provides customer information to its employees pursuant to a confidentiality agreement, and that WMI has terminated and/or initiated legal action against employees who violate such agreement. WMI also demonstrates the value of its customers' identities by explaining release of these identities with the customers' rates would allow competitors to undercut WMI's negotiated rates with specific customers, resulting in a loss of business to WMI and a gain of business to its competitors. Accordingly, we find WMI has demonstrated its customers' identities in the submitted tickets are trade secrets, and the county must withhold the customers' identifying information we marked under section 552.110(a). *See* Restatement of Torts § 757 cmt. b (1939) ("specialized list of customers" can be trade secret); Open Records Decision No. 255 (1980) (customer lists may be withheld under predecessor to section 552.110(a)).

WMI also seeks to withhold the negotiated rate and fee information in the submitted tickets as a trade secret. WMI states it individually negotiates and contracts with some of its customers to set agreed-upon rate and fee terms regarding the disposal of these customers' waste. Consequently, the rate and fee information in the submitted tickets relates to particular contracts between WMI and its customers; it is not "a process or device for continuous use in the operation of the business." *See* Restatement of Torts § 757 cmt. b (1939); *c.f. Huffines*, 314 S.W.2d at 776; ORD 319 at 3, 306 at 3. Therefore, because WMI has not demonstrated the rate and fee information it seeks to withhold meets the definition of a trade secret, the negotiated rates and fees may not be withheld under subsection (a) of section 552.110.

WMI next asserts the rates and fees charged are subject to section 552.110(b). WMI represents this information could be used by a competitor to undercut WMI's pricing with respect to specific customers, thereby harming WMI competitively. However, WMI has not explained how release of these rates and fees, without the customers' identities, would cause it substantial competitive harm. Accordingly, the rates and fees may not be withheld under subsection (b) of section 552.110.

In summary, the county must withhold the marked identifying information of WMI customers under section 552.110(a) of the Government Code. Because WMI does not raise any further exceptions to disclosure, 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](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,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 360605

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

11TH COURT OF APPEALS

EASTLAND, TEXAS

JUDGMENT

Waste Management of Texas, Inc.,

\* From the 261st District  
Court of Travis County,  
Trial Court No. D-1-GN-09-004107.

Vs. No. 11-11-00112-CV

\* April 11, 2013

Greg Abbott, in his official capacity as  
Attorney General of the State of Texas;  
County of Williamson; and Kurt E. Johnson,

\* Opinion by McCall, J.  
(Panel consists of: Wright, C.J.,  
McCall, J., and Hill, sitting  
by assignment.)

This court has inspected the record in this cause and concludes that there is error in the judgment below. Therefore, in accordance with this court's opinion, we reverse the judgment of the trial court, and we render judgment that the customer names and the pricing and volume information in the subject waste tickets are excepted from disclosure under the Texas Public Information Act and that, therefore, Williamson County is prohibited from disclosing the information to the requestor. The costs incurred by reason of this appeal are taxed against the party incurring the same.