



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2010

Ms. Leticia Garza
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2010-05742

Dear Ms. Garza:

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# 376664 (PIR #1657).

The City of Baytown (the "city") received a request for the Axis Violation Incident Monitoring System ("ViMS") report for all intersections studied for Phase 2 red light camera installations, including the "intersection safety site evaluation" report. Although the city takes no position with respect to the public availability of the submitted information, you indicate the release of this information may implicate the proprietary interests of American Traffic Solutions ("ATS"). Accordingly, you state, and provide documentation showing, the city notified ATS of the city's receipt of the request for information and of ATS's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered comments submitted by ATS and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information)

Initially, we will address the requestor's concerns. The requestor informs us the city released the ViMS report for Phase 1 on July 22, 2009. The requestor asserts that by releasing the

ViMS report for Phase 1, the city has set a legal precedent for releasing the information that is subject to the current request, which is the ViMS report for Phase 2. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law. *See Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989)*. In this instance, however, the ViMS report for Phase 1 which was released is not the same document as the ViMS report for Phase 2. Moreover, we have no indication the ViMS report for Phase 2 has been released to any other member of the public. The fact the city has released some information pertaining to the ViMS does not mean that it is legally required to release all information pertaining to the system, even if that information is substantially similar to the information that has been previously released. Furthermore, the city has not taken any position regarding the public availability of the requested information, but rather determined that ATS's interests may be implicated. When a third party's proprietary interests are at issue, section 552.305(d) of the Government Code requires a governmental body to notify that third party of its right to submit comments to this office explaining why its information should be withheld from disclosure. *See Gov't Code § 552.305(d)*. Because ATS claims the ViMS report for Phase 2 is proprietary information, we will consider ATS's argument against disclosure of this information under section 552.110 of the Government Code.

Section 552.110 of the Government Code 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* 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.¹ Open Records Decision No. 402 (1983).

ATS claims the submitted report is a trade secret under section 552.110(a). Although ATS asserts the report contains proprietary algorithmic data, ATS has not identified this data, nor has it explained, how any of the information contained in the report is a formula, pattern, device, or compilation of information which gives ATS an opportunity or advantage over competitors who do not know or use it. Rather, the information in the report is factual information concerning certain traffic patterns at various locations and times in the city. Consequently, ATS has failed to demonstrate the applicability of section 552.110(a) to the report. Thus, the city may not withhold the report under section 552.110(a). As ATS asserts no other exceptions to disclosure, the report 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.

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;
- (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).

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 376664

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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