



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2010

Ms. Caroline E. Cho  
Assistant County Attorney  
Williamson County Attorney's Office  
405 Martin Luther King, #7  
Georgetown, Texas 78626

OR2010-09371

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# 384132.

Williamson County (the "county") received a request for the bid proposals submitted by SunGard Public Sector, Inc. ("SunGard"), Tri-Tech Software Systems ("Tri-Tech"), and Intergraph Corporation ("Intergraph") in response to Request for Proposals number 09WCP817 and a copy of the final awarded contract, including any exhibits, attachments, or addenda.<sup>1</sup> The county received two subsequent requests for the proposal amounts submitted by every company that responded to the Request for Proposals. Although you take no position with respect to the disclosure of the submitted information, you state release of the information may implicate the proprietary interests of several third parties, including SunGard, Tri-Tech, Intergraph, Presynct Technologies, Inc. ("Presynct"), Hitech Systems Pulsiam (Hitech), Tyler Technologies, Inc. ("Tyler"), and New World Systems ("New World"). Accordingly, you state you notified the interested third parties of the county's receipt of the requests for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestors. 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 received comments from Presynct and Hitech stating that neither company objects to release of its proposal amounts. We have also received arguments against disclosure from SunGard. We have reviewed the submitted information and considered the submitted arguments.

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<sup>1</sup>You inform us the first requestor clarified her request to exclude financial statements from Tri-Tech. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

Initially, we note the second and third requestors only seek the proposal amounts submitted by the third parties at issue. Accordingly, the submitted itemized pricing and cost summaries are not responsive to the second and third requests. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Tri-Tech, Intergraph, Tyler, or New World explaining why their proposals, or proposal amounts, should not be released. Therefore, we have no basis to conclude that these companies have protected proprietary interests in their submitted information. *See id.* § 552.110; 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. Accordingly, the county may not withhold any of the submitted information on the basis of the proprietary interests of Tri-Tech, Intergraph, Tyler, or New World.

SunGard raises section 552.104 of the Government Code. This section excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the county does not seek to withhold any information pursuant to this exception, no portion of SunGard's information may be withheld on this basis.

SunGard also claims that portions of its proposal 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: (a) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (b) 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 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); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a third party's claim for exception as valid under section 552.110(a) if the third party 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* Open Records Decision No. 552 at 5 (1990). 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). We note that pricing information pertaining to a

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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).

particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." Restatement of Torts § 757 cmt. b (1939).

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* 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).

SunGard argues that its client references, pricing metrics, and sample documents that were prepared specifically for this contract should be withheld under section 552.110. Upon review, we find that SunGard has established a *prima facie* case that portions of its customer information constitute trade secrets. Thus, the county must withhold the information we have printed and marked in SunGard's proposal under section 552.110(a). We note, however, that SunGard has made some of its customer information publicly available on its website. Because SunGard has published this information, it has failed to demonstrate that this information is a trade secret and none of this information may be withheld under section 552.110(a). Additionally, we find that SunGard has failed to demonstrate how any portion of the remaining information meets the definition of a trade secret, nor has SunGard demonstrated the necessary factors to establish a trade secret claim for the information at issue. *See* Open Records Decision Nos. 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim), 319 at 2 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). We also find that SunGard has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the remaining information at issue would cause the company substantial competitive harm. *See* ORD Nos. 661 at 5-6 (business entity must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Further, we note that SunGard was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Therefore, the county may not withhold any of the remaining information pursuant to section 552.110 of the Government Code.

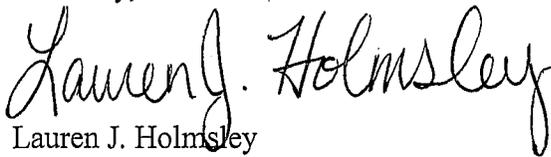
We note that some of the remaining information is protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, the county must withhold the information we have marked under section 552.110(a) of the Government Code. The remaining information must be released to the requestors, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 384132

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

Ms. Karen Colvin  
Senior Proposal Specialist  
Sungard  
1000 Business center Drive  
Lake Mary, Florida 32746  
(w/o enclosures)

Mr. Henry P. Unger  
President  
Hitech Systems  
16030 Ventura Boulevard, Suite 120  
Encino, California 91436  
(w/o enclosures)

Ms. Evelyn J. Graham  
President  
Presynct Technologies, Inc.  
605 Market Street, Suite 401  
San Francisco, California 94105-3206  
(w/o enclosures)

Mr. Blake clark  
TriTech Software Systems  
9860 Mesa Rim Road  
San Diego, California 92121  
(w/o enclosures)

Ms. Beth Johnson  
Intergraph Corp.  
P.O. Box 6695  
Huntsville, Alabama 35813  
(w/o enclosures)

Mr. Dawson Tyler  
6500 International Parkway, Suite 2000  
Plano, Texas 75093  
(w/o enclosures)