



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2010-10354

Dear Ms. McGowan:

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# 386435.

The Dallas Independent School District (the "district") received a request for information pertaining to a request for proposals regarding video surveillance. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. In addition, you state the requested information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you have notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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 Progressive Systems, LLC d/b/a LenSec, LLC ("LenSec"), TAC American-Corporate d/b/a Schneider Electric ("Schneider"), SecureNet, Inc. ("SecureNet"), Sigma Surveillance, Inc. ("Sigma"), and Technology for Education, LLC d/b/a TFE ("TFE"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that 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) of the Government

¹The interested third parties are IBM Corporation; Convergent Technologies; Progressive Systems, LLC d/b/a LenSec, LLC; Red Hawk/UTC Fire and Security; Sigma Surveillance, Inc.; GTSI Corp.; Videotex Security and Fire Alarm Systems, LLC; Johnson Controls, Inc.; QuinServe Technologies; McKinney Security Systems; Technology for Education, LLC d/b/a TFE; Fisk Security Integration Group; Stealth Monitoring, Inc.; Ingersoll Rand Security Technologies; Entech Sales and Service, Inc.; TAC American-Corporate d/b/a Schneider Electric; TD Industries, Inc.; Henry Bros. Electronics, Inc.; SecureNet, Inc.; CIBER, Inc.; IBM; Calence, LLC; Siemens Building Technologies; and Lazo Technologies, Inc.

Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from LenSec, Schneider, SecureNet, Sigma, and TFE. We, thus, have no basis for concluding that any portion of the submitted information pertaining to the non-briefing third parties constitutes proprietary information, and the district may not withhold any portion of the submitted information on the basis of the non-briefing third parties' proprietary interests. 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.

Next, Schneider states it objects to the release of certain unspecified information in its submitted proposal. Schneider, however, has not directed our attention to any law that excepts the information from disclosure, nor has it submitted any arguments explaining why any part of its proposal should not be released. See Gov't Code § 552.305(d)(2)(B); see, e.g., *id.* § 552.110; ORD Nos. 661 at 5-6, 552 at 5, 542 at 3. Therefore, the district must release Schneider's proposal unless it falls within the scope of an exception to disclosure.

We understand LenSec and SecureNet to assert that portions of their respective information are confidential because their documents were marked as such when they were submitted to the district. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

TFE argues that its proposal is excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This section, however, is a discretionary exception that only protects the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. See *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766, 776 (Tex. App.—Austin 1999, pet. denied); 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). As the district does not seek to withhold any information pursuant to section 552.104, we find this section does not apply to the submitted information. Therefore, the district may not withhold any of the submitted information pursuant to section 552.104.

LenSec, SecureNet, Sigma, and TFE argue that portions of their respective proposals are excepted from disclosure under section 552.110 of the Government Code. Although the district also states that the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110. Section 552.110 protects: (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom it was obtained. *Id.* § 552.110. 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 trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552 at 2. Section 757 provides that a trade secret is:

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 . . . 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 Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. 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. Open Records Decision No. 402 (1983). We note that information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events

²The 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 also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982).

Section 552.110(b) protects “[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(b). This exception to disclosure 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. *Id.* § 552.110(b); *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

LenSec, SecureNet, and TFE argue that portions of their respective proposals are excepted from disclosure under section 552.110(a) of the Government Code. Upon review, we conclude LenSec has demonstrated that a portion of its proposal constitutes trade secret information. We also determine that SecureNet has established that some of its client information, which we have marked, constitutes trade secrets. Therefore, the district must withhold the information we have marked under section 552.110(a) of the Government Code. We note, however, that SecureNet has made some of the client information it seeks to withhold publicly available on its website. Because SecureNet has published this information, it has failed to demonstrate that this information is a trade secret, and none of it may be withheld under section 552.110(a). Additionally, we find LenSec, SecureNet, and TFE have failed to establish how any of their remaining information constitutes trade secrets under section 552.110(a). *See* RESTATEMENT OF TORTS § 757 cmt. b (1939) (information is generally not trade secret unless it constitutes “a process or device for continuous use in the operation of the business”). Thus, no portion of the remaining information may be withheld under section 552.110(a) of the Government Code.

LenSec, Sigma, SecureNet, and TFE argue that portions of the remaining information are excepted from disclosure under section 552.110(b) of the Government Code. Upon review, we find LenSec and TFE have established that the release of their respective pricing information, which we have marked, would cause the companies substantial competitive injury. We also find that Sigma and TFE have established that some of their customer information, which we have marked, constitutes commercial and financial information, the release of which would cause Sigma and TFE substantial competitive injury. Therefore, the district must withhold the information we have marked under section 552.110(b) of the Government Code. However, we note both Sigma and TFE have made some of the customer information they seek to withhold publicly available on their respective websites. Because Sigma and TFE have published this information, they have failed to demonstrate that release of this information would cause them substantial competitive injury. As to the remaining information, we find LenSec, Sigma, SecureNet, and TFE have made only general conclusory allegations that release of the remaining information would cause substantial competitive injury and have provided no specific factual or evidentiary showing to support such allegations. *See* Gov’t Code § 552.110; 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), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, market studies, experience, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the district must withhold only the information we have marked under section 552.110(b) of the Government Code.

SecureNet argues that portions of its proposal are excepted under section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131. Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" 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." *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). As previously stated, SecureNet has failed to demonstrate any portion of its remaining information meets the definition of a trade secret, and SecureNet has provided no specific factual or evidentiary showing release of its remaining information would cause the company substantial competitive injury. Consequently, the district may not withhold any of the remaining information under section 552.131(a) of the Government Code. Furthermore, we note that section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the district does not assert section 552.131(b) as an exception to disclosure, we conclude that no portion of the submitted information is excepted under section 552.131(b) of the Government Code.

We note that portions of the remaining information are subject to common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). The remaining information contains personal financial information, and the public does not have a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600. We have marked the information that is confidential under common-law privacy and that the district must withhold under section 552.101.

We note the submitted information contains insurance policy numbers that are subject to section 552.136 of the Government Code. Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. Thus, the district must withhold the insurance policy numbers we marked in the submitted proposals under section 552.136 of the Government Code.⁴

Finally, we note that some of the remaining information at issue is protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information, but a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). Thus, if a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright

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

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

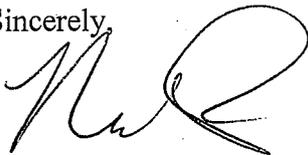
law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information we have marked under section 552.110 of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released, but any information subject to copyright may only be released in accordance with federal 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 386435

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Brandon W. Weaver
Attorney for Sigma Surveillance, Inc.
2816 Bedford Road
Bedford, Texas 76021
(w/o enclosures)

Mr. Carmellia C. Boyer
Attorney for LenSec LLC
3040 Post Oak Boulevard, Suite 1300
Houston, Texas 77056-6560
(w/o enclosures)

Mr. Brian Bergstrom
President
SecureNet, Inc.
3440 Sojourn, Suite 240
Carrollton, Texas 75006-2349
(w/o enclosures)

Mr. Daryl Williams
Client Representative
IBM Corporation
Two Riverway, Suite 1500
Houston, Texas 77056
(w/o enclosures)

Mr. Bryan Terrell
Account Executive
Convergent Technologies
2855 Trinity Square Drive, Suite 110
Carrollton, Texas 75006
(w/o enclosures)

Mr. Robert Christensen
Commercial Sales Representative
Red Hawk/UTC Fire and Security
400 North Industrial Drive, Suite 150
Richardson, Texas 75081
(w/o enclosures)

Mr. Jonathan Glenn
GTSI Corp.
2553 Dulles View Drive, Suite 100
Herndon, Virginia 20171-5219
(w/o enclosures)

Mr. Hank McGuffee
Project Quality Manager
Johnson Controls, Inc.
Major Projects
3021 West Bend Drive
Irving, Texas 75063
(w/o enclosures)

Mr. Jim Hering
Attorney for Technology for Education
Pakis, Giotes, Page & Burleson, PC
P.O. Box 58
Waco, Texas 76703-0058
(w/o enclosures)

Mr. Victor J. Quinones, Jr.
President/CEO
QuinServe Technologies
P.O. Box 421087
Houston, Texas 77242-1087
(w/o enclosures)

Mr. Brad Alexander
McKinney Security Systems
1301 Central Expressway South
Suite 105
Allen, Texas 75013
(w/o enclosures)

Mr. Mike Saxon
Houston and Dallas Divisions
Fisk Security Integration Group
111 TC Jester Boulevard
Houston, Texas 77007
(w/o enclosures)

Mr. Norm Charney
President
Stealth Monitoring, Inc.
10330 Markinson Road
Dallas, Texas 75238
(w/o enclosures)

Ms. Lindsey Mersman
Integrated Systems Consultant
Ingersoll Rand Security Technologies
5200 Tennyson Parkway, Suite 300
Plano, Texas 75024
(w/o enclosures)

Mr. Paul D. Pettigrew
Senior Account Manager
Entech Sales and Service, Inc.
3404 Garden Brook Drive
Dallas, Texas 75234
(w/o enclosures)

Mr. William O. Parten
Vice President
TD Industries, Inc.
13850 Diplomat Drive
Dallas, Texas 75234
(w/o enclosures)

Mr. Sean Finegan
Account Executive
Henry Bros. Electronics, Inc.
8416 Sterling
Irving, Texas 75063
(w/o enclosures)

Ms. Mary Anne Clement
Director of Technology
CIBER, Inc.
2001 Bryan, Suite 1200
Dallas, Texas 75201
(w/o enclosures)

Mr. Phillip Lawrence
IT Services Manger
IBM
1503 LBJ Freeway
Dallas, Texas 75234
(w/o enclosures)

Mr. Tim Bean
Senior Account Executive
Siemens Building Technologies
8600 North Royal Lane, Suite 100
Irving, Texas 75063
(w/o enclosures)

Mr. Al Vasquez
VP Business Development
Lazo Technologies, Inc.
611 West Mockingbird, Lane
Dallas, Texas 75247
(w/o enclosures)

Mr. Randy Keyes
General Manager
Videotex Security and Fire Alarm
Systems, LLC
10255 Miller Road
Dallas, Texas 75238
(w/o enclosures)

Mr. Daren Fisher
Account Manager
Calence, LLC
1200 East Campbell Road, Suite 104
Richardson, Texas 75081
(w/o enclosures)