



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 2, 2011

Ms. Alicia Currin-Moore  
Underwood, Wilson, Berry, Stein & Johnson, P.C.  
P.O. Box 9158  
Amarillo, Texas 79105-9158

OR2011-05978

Dear Ms. Currin-Moore:

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# 416038.

The Dalhart Independent School District (the "district"), which you represent, received a request for twelve categories of information pertaining to Track and Field Package Job No. 10-07. You state you will release most of the requested information. Although you raise no exceptions to disclosure of the submitted information, you indicate release of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, the district has notified MidAmerica Golf and Landscape ("MidAmerica"); Paragon Sports Constructors, LLC ("Paragon"); Hellas Construction, Inc. ("Hellas"); AstroTurf; and Vibra-Whirl Sports, Ltd. ("Vibra-Whirl") of the request and their right to submit arguments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received comments from Paragon. We have considered the submitted arguments and reviewed the submitted information.

We note Paragon seeks to withhold information the district has not submitted to this office for our review. This ruling does not address that information and is limited to the

information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from MidAmerica, Hellas, AstroTurf, or Vibra-Whirl. Thus, these third parties have not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 district may not withhold any of the submitted information on the basis of any proprietary interests MidAmerica, Hellas, AstroTurf, or Vibra-Whirl have in the information. We will consider Paragon's arguments against disclosure.

Paragon raises section 552.110 of the Government Code for portions of its submitted information. 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 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 trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. 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.<sup>1</sup> 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. *See* Open Records Decision No. 402 (1983).

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.*; *see also* ORD 661 at 5-6 (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).

Paragon states some of its submitted information consists of trade secrets under section 552.110(a) of the Government Code. Upon review, however, we determine Paragon has failed to demonstrate any portion of its submitted information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the district may not withhold any of Paragon’s information at issue under section 552.110(a) of the Government Code.

Paragon also contends some of its submitted information is excepted under section 552.110(b) of the Government Code. Paragon argues release of this information would allow Paragon’s competitors to compromise its position in the market. However,

---

<sup>1</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.

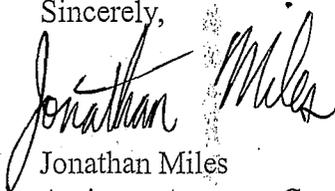
RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Paragon has failed to provide specific factual evidence demonstrating how release of the information at issue would cause it substantial competitive harm under section 552.110(b). See ORD 661. Accordingly, we conclude that the district may not withhold any of the information at issue under section 552.110(b) of the Government Code. As no further arguments against disclosure have been made, the submitted 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 416038

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. William Chaffe  
Paragon Sports Constructors, LLC  
4100 International Plaza, Suite 505  
Fort Worth, Texas 76109  
(w/o enclosures)

Mr. Shawn Mosher  
Mid America Golf and Landscape  
1621 Southeast Summit Avenue  
Lee's Summit, Missouri 64081  
(w/o enclosures)

Mr. Bryan Jones  
AstroTurf  
2221 Murphy Drive, #2135  
Bedford, Texas 76021  
(w/o enclosures)

Mr. Tommy McDougal  
Hellas Construction, Inc.  
12710 Research Boulevard, Suite 240  
Austin, Texas 78759  
(w/o enclosures)

Mr. Glen Swafford  
Vibra Whirl Sports, LTD  
P.O. Box. 966  
Panhandle, Texas 79068  
(w/o enclosures)