ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2011-06484

Dear Mr. Smith:

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# 417080 (Commission OR-20110217-5737).

The Texas Health and Human Services Commission (the "commission") received a request for submitted proposals, proposal evaluations, and scoring sheets for Request for Proposal 529-10-0062. You state the commission has released most of the requested information. Although the commission takes no position with respect to the remaining requested information, you state that the proprietary interests of a third party might be implicated. Accordingly, you state, and provide documentation demonstrating, you notified CSG Government Solutions, Inc. ("CSG") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 reviewed the submitted information and arguments submitted by CSG.

CSG submits arguments against disclosure of its information under section 552.110 of the Government Code. 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. Gov't Code § 552.110(a), (b). Section 552.110(a) protects the proprietary interests of private parties by excepting from

disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A "trade secret" has been defined as the following:

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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) (citation omitted); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

> (1) the extent to which the information is known outside of [the company's] business;
>
> (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 to [its] competitors;
>
> (5) the amount of effort or money expended by [the company] in developing the information; and
>
> (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* ORD 232. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 2 (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. 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.* § 552.110(b); ORD 661.

CSG argues the information in Sections 2.2 and 4 constitutes trade secrets. Upon review, we find that CSG has established a prima facie case that portions of the submitted information, which we have marked, constitute trade secrets. Accordingly, the commission must withhold the information we have marked in Section 4 under section 552.110(a) of the Government Code. However, we find CSG has failed to demonstrate that any of the remaining information for which it asserts section 552.110(a) 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 commission may not withhold any of the remaining information on the basis of section 552.110(a) of the Government Code.

CSG contends the information in Sections 2.2 and 2.3, Appendices 1 and 2, and Attachment A is commercial or financial information, release of which would cause substantial competitive harm to CSG. Upon review of CSG's arguments under section 552.110(b), we conclude CSG has established the release of its client information we have marked in Section 2.2 and the information we have marked in Appendix 2 would cause it substantial competitive injury; therefore the commission must withhold the information we have marked under section 552.110(b). However, we find that CSG has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude that the commission may not withhold any of the remaining information under section 552.110(b) of the Government Code.

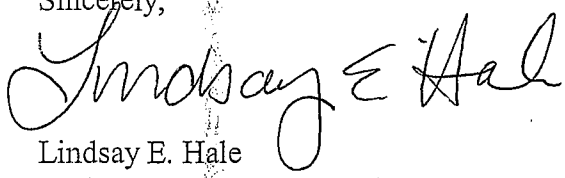
In summary, the commission must withhold the information we have marked in Section 4 under section 552.110(a) of the Government Code. The commission must withhold the

information we have marked in Section 2.2 and Appendix 2 under section 552.110(b) of the Government Code. The commission must release the remaining information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 417080

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Walsworth
Chief Executive Officer
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Chicago, Illinois 60601
(w/o enclosures)