



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2012

Ms. L. Renee Lowe  
Assistant County Attorney  
Harris County  
2525 Holly Hall, Suite 190  
Houston, Texas 77054

OR2012-04252

Dear Ms. Lowe:

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# 448750 (CA File No. 11HSP1350).

The Harris County Hospital District (the “district”) received a request for information related to job number 11/0198 and the corresponding RFP. You state some of the requested information has been released to the requestor. You state the district does not have information related to the requested process to appeal the district’s choice of vendor.<sup>1</sup> Although the district takes no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of LetterLogic, Inc. (“LetterLogic”). Pursuant to section 552.305 of the Government Code, you were

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

required to notify LetterLogic of the request and its opportunity to submit comments to this office explaining why the submitted information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (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 to disclosure in certain circumstances). We have received comments from a representative of LetterLogic. We have considered the submitted arguments and reviewed the submitted information.

LetterLogic raises section 552.110 of the Government Code for portions of the submitted information. Section 552.110 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) “[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.” *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 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.<sup>2</sup> 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); 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).

LetterLogic asserts the information it has marked constitutes trade secrets subject to section 552.110(a). Specifically, LetterLogic states the information it has marked relates to operational processes, including tasks, task sequences, and a combination of devices and technologies that are unique to LetterLogic and have been developed over a period of several years at the expenditure of significant resources. Upon review, we find the information we have marked constitutes trade secrets. Accordingly, the district must withhold the information we have marked under section 552.110(a) of the Government Code. However, we find LetterLogic has not demonstrated the necessary factors to establish a trade secret claim for the remaining information at issue. Thus, the district may not withhold this information under section 552.110(a) of the Government Code.

LetterLogic contends some of its information is commercial or financial information, release of which would cause competitive harm. Upon review, we find LetterLogic has demonstrated release of its financial information would cause substantial competitive harm. Accordingly, the district must withhold the information we have marked under section 552.110(b) of the Government Code.

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

In summary, the district must withhold the information we have marked under sections 552.110(a) and 552.110(b) of the Government Code. The remaining 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,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 448750

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)