



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2012

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2012-16199

Dear Ms. Alexander:

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# 467579.

The Texas Department of Transportation (the "department") received two requests for information pertaining to a specified RFP regarding the Statewide Toll System Integration and Maintenance contract. You state you will release some of the requested information. Although you claim no exceptions to disclosure of the submitted information, you state its release may implicate the proprietary interests of Raytheon Highway Transportation Management Systems ("Raytheon"), Telvent USA Corporation ("Telvent"), and TransCore, L.P. ("TransCore"). Accordingly, you notified these companies of the requests and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have considered comments from Raytheon, Telvent, and TransCore and reviewed the submitted representative sample of information.

Raytheon and TransCore assert their information is excepted from public disclosure under section 552.104 of the Government Code, which excepts "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception

protects the competitive interests of governmental bodies such as the department, not the proprietary interests of private parties such as Raytheon and TransCore. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, the department does not raise section 552.104 as an exception to disclosure. Therefore, the department may not withhold any of the submitted information under section 552.104 of the Government Code.

Next, we note Raytheon, Telvent, and TransCore all seek to withhold information that the department did not submit for our review. This ruling does not address information beyond what the department has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information. *See id.* For this reason, we do not address Raytheon's, Telvent's, or TransCore's arguments against disclosure of the information not submitted by the department.

Raytheon, Telvent, and TransCore claim section 552.110 of the Government Code, which 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, 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 . . . . 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 776 (Tex. 1958). 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> 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 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. 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 Open Records Decision No. 661 at 5 (1999).

Upon review, we find Telvent and Raytheon have made a *prima facie* case that some of their information constitutes a trade secret. Accordingly, the department must withhold the information we have marked under section 552.110(a) of the Government Code. However, we find Telvent, Raytheon, and TransCore have failed to demonstrate that any portion of the remaining submitted information meets the definition of a trade secret. 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 3 (1982) (information relating to organization and personnel, market studies, qualifications and experience, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the department may not withhold any of the remaining information under section 552.110(a) of the Government Code.

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

Upon further review, we find certain pricing information related to Telvent constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold the information we have marked under section 552.110(b) of the Government Code. However, both Raytheon and TransCore make only conclusory allegations that the release of the remaining information would result in substantial competitive injury. We further note TransCore was the winning bidder with respect to the contract at issue, and the pricing information of a winning bidder is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, the department may not withhold any of the remaining information under section 552.110(b) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.110 of the Government Code. The remaining 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,



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Open Records Division

JWG/dls

Ref: ID# 467579

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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