



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2013

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

OR2013-04199

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# 481415 (ORR# 11766).

The Dallas Independent School District (the "district") received a request for all proposals, except for the requestor's company's proposal, submitted in response to request for proposals ("RFP") TF-203970 for network electronics and for a report of the vendor rankings.¹ We understand the district takes no position with respect to the submitted information; however, you state its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the request for information and of each company's right to submit arguments stating why its information should not be released.² See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from CSI. We have considered the submitted arguments and reviewed the submitted information.

¹You state the district sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

²You inform us the interested parties are Computer Solutions, Inc. ("CSI"); CompuCom Systems, Inc.; IP Convergence; Insight Public Sector, Inc.; Netsync Network Solutions; Peak Methods, Inc., d/b/a Peak UpTime; and Redapt, Inc.

Initially, we note the district did not submit any information pertaining to the requested report of vendor rankings. To the extent such information existed on the date the district received the request, we presume you have released it. If not, you must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

We next note 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, only CSI has submitted comments to this office explaining why its submitted information should not be released. Therefore, we have no basis to conclude that the remaining third parties have a protected proprietary interest in the submitted information. *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. Thus, the district may not withhold any portion of the submitted information based upon the proprietary interests of the remaining third parties.

CSI does not raise a specific provision of the Act to withhold its information at issue. *See* Gov't Code § 552.305. However, we understand from the context of its arguments that CSI asserts the submitted information is excepted from disclosure 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. *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. *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.³ RESTATEMENT OF TORTS § 757 cmt. b. 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 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. 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.

Upon review, we find CSI failed to demonstrate how any portion of the information at issue meets the definition of a trade secret, nor has CSI demonstrated the necessary factors to establish a trade secret claim. *See* ORDs 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 2 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). Therefore, the district may not withhold any of CSI’s information pursuant to section 552.110(a) of the Government Code.

³The 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 also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Further, we find CSI has not demonstrated how release of the information at issue would cause the company substantial competitive injury. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because 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. Consequently, the district may not withhold any of CSI's information under section 552.110(b) of the Government Code.

We note a portion of the submitted information is subject to section 552.136 of the Government Code.⁴ Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the district must withhold the information we have marked under section 552.136 of the Government Code. As you raise no exceptions to disclosure, 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 481415

Enc. Submitted documents

c: Requestor
(w/o enclosures)

D.K. Bailey
Computer Solutions, Inc.
507 Highway 77 North, Suite 510
Waxahachie, Texas 75165
(w/o enclosures)

Mr. Nathan Mitchell
Account Executive
CompuCom Systems, Inc.
7171 Forest Lane
Dallas, Texas 75230
(w/o enclosures)

Mr. Steve Baker
IP Convergence
512 Highway 377
Argyle, Texas 76226
(w/o enclosures)

Mr. Daren Fisher
Account Executive
Insight Public Sector, Inc.
3480 Lotus Drive
Plano, Texas 75075
(w/o enclosures)

Mr. Thomas Neault
Account Manager
Netsync Network Solutions
6060 Mockingbird Lane
Dallas, Texas 75206
(w/o enclosures)

Mr. Richard J. Nichols
CEO
Peak Methods, Inc.
823 South Detroit Avenue, Suite 200
Tulsa, Oklahoma 74120-4223
(w/o enclosures)

Ms. Brandy Meyer
Redapt, Inc.
595 Round Rock West Drive, Suite 302
Round Rock, Texas 78681
(w/o enclosures)