



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2014

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

OR2014-01439

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# 511812.

The Texas Department of Transportation (the "department") received a request for (1) all letters of interests with accompanying attachments, and (2) all other certification documents submitted in response to solicitation numbers 86-2IDP5042, 86-2RFP5012, and 86-2IDP5039. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified Atkins; Atkins North America; Binkley & Barfield, Inc. ("Binkley"); Bridgefarmer & Associates, Inc.; Brown & Gray Engineers, Inc.; CH2M Hill; HDR Engineering, Inc.; HNTB Corporation; H.W. Lochner, Inc.; Jacobs Engineering Group, Inc.; Lina T. Ramey & Associates, Inc.; LJA, Ramos/LJA-Joint Venture; Lockwood; Andrews & Newnam, Inc.; Reynolds, Smith & Hills, Inc.; and URS Corporation of the request and of their right to submit arguments to this office explaining why their 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 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 arguments

from Binkley. Thus, we have considered its arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from Binkley. Thus, the remaining third parties have failed to demonstrate 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 department may not withhold the submitted information on the basis of any proprietary interests any of the remaining third parties may have in the information.

Binkley contends some of its information is excepted from disclosure as a trade secret under section 552.110 of the Government Code. Section 552.110(a) protects trade secrets obtained from a person that are privileged or confidential by statute or judicial decision. *See* Gov't Code § 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 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 763, 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* 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. Open Records Decision No. 402 (1983).

Upon review, we find Binkley has failed to demonstrate how the information at issue meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim. *See* ORDs 552 at 5 (party must establish *prima facie* case that information is trade secret), 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). Therefore, the department may not withhold the information at issue pursuant to section 552.110(a) of the Government Code.

We note the submitted information contains information subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136(b) provides, "[n]otwithstanding any other provision of [the Act], 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. Open Records Decision No. 684 at 9 (2009). Thus, the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As no other exceptions to disclosure have been raised, the remaining information must be released.

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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).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 511812

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Larry Barfield  
President  
Binkley & Barfield  
1710 Seamist Drive  
Houston, Texas 77008  
(w/o enclosures)

Atkins  
1250 Wood Branch Park Drive, Suite 300  
Houston, Texas 77042  
(w/o enclosures)

Atkins North America  
10100 Reunion Place, Suite 850  
San Antonio, Texas 78216  
(w/o enclosures)

Bridgefarmer & Associates, Inc.  
12801 North Central Expressway, Ste 400  
Dallas, Texas 75243  
(w/o enclosures)

Brown & Gay Engineers, Inc.  
2595 Dallas Parkway, Suite 204  
Frisco, Texas 75034  
(w/o enclosures)

HDR Engineering, Inc.  
810 Hesters Crossing, Suite 120  
Round Rock, Texas 78681  
(w/o enclosures)

HNTB Corporation  
5910 West Plano Pkwy, Suite 200  
Plano, Texas 75093  
(w/o enclosures)

HNTB Corporation  
2950 North Loop West, Suite 900  
Houston, Texas 77092  
(w/o enclosures)

Jacobs Engineering Group  
7950 Elmbrook Drive  
Dallas, Texas 75247  
(w/o enclosures)

Lina T. Ramey & Associates, Inc.  
1349 Empire Central, Suite 900  
Dallas, Texas 75247  
(w/o enclosures)

Ramos/LJA - Joint Venture  
14606 Kellywood Lane  
Houston, Texas 77079  
(w/o enclosures)

Reynolds, Smith & Hills, Inc.  
Westpark Building  
8140 North Mopac Expwy, 2-100  
Austin, Texas 78759  
(w/o enclosures)

CH2M Hill  
12750 Merit Drive, Suite 1100  
Dallas, Texas 75251  
(w/o enclosures)

HDR Engineering, Inc.  
17111 Preston Road, Suite 200  
Dallas, Texas 75248  
(w/o enclosures)

HNTB Corporation  
130 East Travis, Suite 200  
San Antonio, Texas 78205  
(w/o enclosures)

H.W. Lochner, Inc.  
810 Hesters Crossing, Suite 225  
Round Rock, Texas 78681  
(w/o enclosures)

Jacobs Engineering Group, Inc.  
2705 Bee Caves Road, Suite 300  
Austin, Texas 78746  
(w/o enclosures)

LJA  
2929 Briarpark Drive, Suite 600  
Houston, Texas 77042  
(w/o enclosures)

Lockwood, Andrews & Newnam, Inc.  
10101 Reunion Place, Suite 200  
San Antonio, Texas 78216  
(w/o enclosures)

URS Corporation  
9901 IH-10 West, Suite 350  
San Antonio, Texas 78230  
(w/o enclosures)

URS Corporation  
9400 Amberglen Boulevard  
Austin, Texas 78729  
(w/o enclosures)