



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2014

Ms. Katheryne MarDock  
Assistant General Counsel  
Public Information Office  
Legal Services  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2014-06236

Dear Ms. MarDock:

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# 519591.

The Houston Independent School District (the "district") received two requests for the bid proposals submitted in response to request for proposals number 13-11-06. The second requestor also asked for the related matrix. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, the district notified AssetWorks, Inc. ("AssetWorks"); Enterprise Asset Services, Inc. ("Asset Services"); Prime Systems ("Prime"); ProBar, A Division of Bondurant Enterprises, Inc. ("ProBar"); QA Systems, Inc. ("QA"); and S.L. King Technologies, Inc. ("King") of the request for information and of their 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 received comments from Asset Services and ProBar. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district did not submit the requested matrix for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request existed on the date the district received the request, we assume that you have released it to the requestor. If the district has not released any such information, it must release the information to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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, AssetWorks, Prime, QA, and King have not submitted comments to this office explaining why their information should not be released. Therefore, we have no basis to conclude that any of these companies has a protected proprietary interest in the requested 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 requested information based upon the proprietary interests of AssetWorks, Prime, QA, or King.

Asset Services and ProBar claim portions of their information are excepted under section 552.110 of the Government Code.<sup>1</sup> 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) of the Government Code 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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. Section 757 provides that a trade secret is

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<sup>1</sup>We note some of the personnel information Asset Services seeks to withhold, pages labeled 20 and 22-28, was not submitted by the district for our review. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the district, this ruling does not address the arguments of Asset Services against its disclosure.

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.<sup>2</sup> 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 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. *See* 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

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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 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, 306 at 2 (1982), 255 at 2 (1980).

result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (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).

Upon review, we find Asset Services has established a *prima facie* case its customer information constitutes trade secret information for purposes of section 552.110(a). Accordingly, to the extent the customer information at issue is not publicly available on the company's website, the district must withhold the customer information at issue under section 552.110(a). Further, we find ProBar has established a *prima facie* case some of its information, which we have marked, constitutes trade secret information. Therefore, the district must withhold the information we have marked in ProBar's proposal under section 552.110(a). However, Asset Services and ProBar have failed to demonstrate that any of the remaining information they seek to withhold meets the definition of a trade secret, nor have these companies demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, none of the remaining information of Asset Services or ProBar may be withheld under section 552.110(a) of the Government Code.

Upon review of the arguments of Asset Services and ProBar under section 552.110(b), we find ProBar has demonstrated its customer information, and both companies have established their pricing information, constitute commercial or financial information, the release of which would cause the companies substantial competitive injury. Therefore, the district must withhold this information under section 552.110(b) of the Government Code. We find, however, neither company has demonstrated substantial competitive injury would result from the release of any of the remaining information at issue. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, 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). Accordingly, the district may not withhold any of the remaining information under section 552.110(b).

Asset Services claims its tax account and insurance policy numbers are excepted from public disclosure under section 552.136 of the Government Code. We note some of the other proposals contain insurance policy numbers. Section 552.136 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 determined insurance policy numbers are access device numbers for purposes

of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, we conclude the district must withhold the insurance policy numbers in the submitted proposals under section 552.136 of the Government Code.<sup>3</sup> However, the remaining information Asset Services seeks to withhold under this exception does not include any tax account numbers. Therefore, the district may not withhold any of the remaining information at issue in the Asset Services proposal under section 552.136.

To summarize: To the extent the customer information is not publicly available on the company's website, the district must withhold the customer information of Asset Services under section 552.110(a) of the Government Code. The district also must withhold (1) the information we have marked in ProBar's proposal under section 552.110(a) of the Government Code, (2) ProBar's customer information under section 552.110(b) of the Government Code, and (3) the pricing information of both Asset Services and ProBar under section 552.110(b). The district must withhold the insurance policy numbers in the submitted proposals under section 552.136 of the Government Code. The district 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.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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136 (d), (e).

Ref: ID# 519591

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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