



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2014

Mr. Allan Meeseey
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2014-14965

Dear Mr. Meeseey:

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# 534116.

The Texas Department of Transportation (the "department") received a request for information pertaining to Solicitation 36-4RFP5024, including the list of all teams that submitted SOQs and copies of all proposals submitted.¹ You state you have released some information. 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, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released.² *See Gov't*

¹We note the department 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); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The third parties notified pursuant to section 552.305 of the Government Code are: AIA Engineers, Ltd.; Brown & Gay Engineers, Inc.; URS Corporation; Klotz Associates, Inc.; TEDSI Infrastructure Group, Inc.; Rodriguez Transportation Group, Inc.; Walter P. Moore and Associates, Inc.; AECOM Technical Services,

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 AIA Engineers, Ltd. (“AIA”) and a representative of Freese and Nichols, Inc. (“Freese and Nichols”). We have considered the submitted arguments and reviewed the submitted information.

Initially, we 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, we have only received comments from AIA and a representative of Freese and Nichols explaining why their information at issue should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests 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. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

AIA and Freese and Nichols argue portions of their information constitute trade secrets 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, 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

Inc.; Atkins North America, Inc.; Binkley & Barfield, Inc.; CDM Smith, Inc.; Cobb, Fendly & Associates, Inc.; Epic Transportation Group, LP; Gunda Corporation, LLC; HDR Engineering, Inc.; Jacobs Engineering Group, Inc.; Kellogg Brown & Root Services, Inc.; Kimley Horn & Associates, Inc.; Lee Engineering, LLC; LJA Engineering, Inc.; Lockwood, Andrews & Newnam, Inc.; Neel-Schaffer, Inc.; Pape-Dawson Engineers, Inc.; Reynolds, Smith and Hills, Inc.; RJ Rivera Associates, Inc.; Yvonne Newman Engineering, Inc.; Alliance Transportation Group, Inc.; Arcadis-U.S., Inc.; Arredondo, Zepeda & Brunz, LLC; Freese and Nichols, Inc.; OTHON, Inc.; and Parsons Brinckerhoff, Inc.

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.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). We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

Upon review, we find AIA and Freese and Nichols have failed to establish a *prima facie* case that any portion of their information meets the definition of a trade secret. We further find AIA and Freese and Nichols have failed to demonstrate the necessary factors to establish a trade secret claim for their information. *See* ORD 402. Therefore, none of AIA's or Freese and Nichols's information may be withheld under section 552.110(a) of the Government

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.

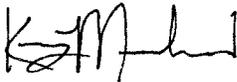
RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Code. As you raise no further exceptions to disclosure, the 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 534116

Enc. Submitted documents

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