



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Ms. Ana Vieira
Attorney and Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-15446

Dear Ms. Vieira:

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# 535011 (UT OGC# 156571).

The University of Texas Medical Branch at Galveston (the "university") received a request for rates given by outside staffing companies to the university regarding registered nurses and licensed practical nurses in facilities maintained by the Texas Department of Criminal Justice. 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 Advanced Health Education Center, Maxim Healthcare Service, Millenia Medical Staffing, Supplemental Healthcare, Capstone Personnel Services, CHG Medical Staffing, Inc., Pro Health Staffing, Quest Staffing Group, Inc., Accountable Healthcare Staffing, JWS Health Consultants d/b/a UltraStaff, Advantage on Call, L.L.C., Texas PRN, Advance'd Temporaries, Inc., and Amedistaff L.L.C. d/b/a The Right Solutions ("TRS") 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 TRS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have marked portions of the submitted information as not responsive to the instant request. The university need not release the nonresponsive information you have marked in response to this request, and this ruling will not address that information.

Next, 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 TRS. Therefore, we have no basis to conclude any of 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. Accordingly, the university may not withhold any of the information at issue on the basis of any proprietary interest any of the remaining third parties may have.

Next, we note TRS argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the university has submitted to us for our review. *See Gov't Code § 552.301(e)(1)(D)* (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for information.

Next, TRS claims its information is excepted under 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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. 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.¹ RESTATEMENT OF TORTS § 757 cmt. b (1939). 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). 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).

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 (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).

¹The 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 (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Having considered TRS' arguments under section 552.110(a), we determine TRS has failed to demonstrate that any portion of its submitted information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* Open Records Decision No. 319 at 3 (1982) (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). Accordingly, the university may not withhold any of TRS' submitted information on the basis of section 552.110(a) of the Government Code.

Upon review, we also find TRS has not demonstrated the release of any of its information would result in substantial harm to its competitive position. *See* ORD No. 319 at 3 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). Furthermore, we note the pricing information of a winning bidder, such as TRS, 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 344-345 (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 university may not withhold any of the information at issue under section 552.110(b). As there are no remaining arguments against 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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 535011

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Advanced Health Education Center
d/b/a MedRelief Staffing
8502 Tybor
Houston, Texas 77074
(w/o enclosures)

Ms. Ginger DeLance
Director of Sales
Pro Health Staffing
1331 McKinney, Suite 1255
Houston, Texas 77010
(w/o enclosures)

Ms. Jessa Lombo
Assistant Controller
Maxim Healthcare Service
7227 Lee Deforest Drive
Columbia, Maryland 21046
(w/o enclosures)

Mr. Tyler Richardson
Operations Manager
Quest Staffing Group, Inc.
9300 Wade Boulevard, Suite 230
Frisco, Texas 75035
(w/o enclosures)

Mr. Brett Hughes
Vice President Hospital Services
Millenia Medical Staffing
109 River Landing Drive, Suite 400
Daniel Island, South Carolina 29492
(w/o enclosures)

Mr. Brian Young
Vice President
Accountable Healthcare Staffing
4600 Fuller Drive, Suite 150
Irving, Texas 75038
(w/o enclosures)

Ms. Gina Baker
Contracts Manger
Supplemental Health Care
1640 West Redstone Center Drive,
Suite 200
Park City, Utah 84098
(w/o enclosures)

Ms. Jolyn West Scheirman
President
JWS Health Consultants
d/b/a/ UltraStaff
1818 Memorial Drive, Suite 200
Houston, Texas 77007
(w/o enclosures)

Mr. Jon Smithson
President
Capstone Personnel Services
1415 Troup Highway
Tyler, Texas 75702
(w/o enclosures)

Mr. Mac Lomax
Director
Advantage On Call, LLC
Formerly Premier Healthcare Service, LLC
707 Wilshire Boulevard, Suite 4350
Los Angeles, California 90017
(w/o enclosures)

CHG Medical Staffing, Inc.
Foundation Medical Staffing
6440 South Millrock Drive
Suite 175
Salt Lake City, Utah 84121
(w/o enclosures)

Mr. Taylor Faught
Vice President of Marketing
Amedistaff LLC
d/b/a The Right Solutions
P.O. Box 595
Tontitown, Arizona 72770
(w/o enclosures)

Ms. Rebecca Savell
Director
Texas PRN
6103 East Grant Road
Tucson, Arizona 85712
(w/o enclosures)

Mr. Hammond Scott Gibson
Advance'd Temporaries, Inc.
1221 WSW Loop 323
Tyler, Texas 75701
(w/o enclosures)