



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2014

Ms. Audra Gonzalez Welter  
Attorney and Public Information Coordinator  
Office of General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2014-16085

Dear Ms. Welter:

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# 535938 (The University of Texas System OGC# 156524).

The University of Texas System (the "system") received a request for a complete copy of the proposal from all proposing vendors, completed pricing comparison of proposals from the bidding entities, scoring/evaluation documents used to make comparison evaluations of the top three bidding entities, and the final awarded amount broken down by line item in regards to the selection of a vendor to provide claims handling services, payment services, and other related services related to workers' compensation and other self-insurance programs. You state some of the information will be released to the requestor. Although you take no position with respect to the public availability of the remaining requested information, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state and provide documentation showing, you have notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> See Gov't Code

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<sup>1</sup>The third parties notified pursuant to section 552.305 of the Government Code are: Carl Warren & Company, TRISTAR, Sedgwick Claims Management Services, Inc. ("Sedgwick"), Texas Political Subdivisions, Cannon Cochran Management Services, Inc. ("CCMSI"), Gallagher Basset Services, Inc., and Church and Co. L.L.C.

§ 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from CCMSI and Sedgwick. 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 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 comments from CCMSI and Sedgwick explaining why their submitted information should not be released. Therefore, we have no basis to conclude release of the information will harm the proprietary interests of the remaining third parties. *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 (1990). Accordingly, the system may not withhold the information based on any proprietary interests the remaining third parties may have in it.

Sedgwick raises section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). In this instance, Sedgwick has not directed our attention to any law under which any of its information is considered to be confidential for the purposes of section 552.101. Therefore, the system may not withhold any of Sedgwick's information under section 552.101 of the Government Code.

Sedgwick and CCMSI raise section 552.110(a) of the Government Code for their information. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code § 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 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.<sup>2</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 (1990). However, we cannot conclude that 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 CCMSI has established a *prima facie* case that its customer information constitutes trade secrets. Accordingly, to the extent the customer information at issue is not publicly available on CCMSI's website, the system must withhold this customer information under section 552.110(a). Furthermore, we find Sedgwick has established a *prima facie* case that some of its information, which we have marked, constitutes trade secrets. Therefore, the system must withhold this information under section 552.110(a). However, we find Sedgwick and CCMSI have failed to demonstrate the remaining information for which they assert section 552.110 meets the definition of a trade

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

secret, nor have they demonstrated the necessary factors to establish a trade secret claim for this information. As previously noted, 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 Huffines*, 314 S.W.2d at 776; ORDs 319 at 3, 306 at 3. Further, pricing information of a winning bidder, as CCMSI is in this case, is generally not excepted under section 552.110. *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 system may not withhold any of Sedgwick’s and CCMSI’s remaining information under section 552.110(a) of the Government Code.

We note some of the remaining submitted information is subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 states 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. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, we find the system must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent CCMSI’s customer information is not publicly available on its website, the system must withhold CCMSI’s customer information under section 552.110(a) of the Government Code. The system must also withhold the information we have marked under section 552.110(a) of the Government Code. The system must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The remaining information must be released, however any information protected by copyright may only be released in accordance with copyright law.

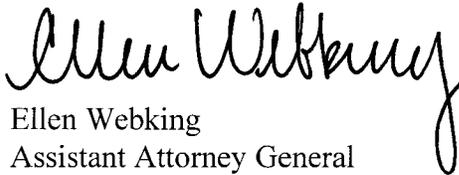
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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/ac

Ref: ID# 535938

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. William Beattie  
Cannon Cochran Management  
Services Inc.  
4301 Spyglass Drive  
Norman, Oklahoma 73072  
(w/o enclosures)

Mr. Keith Alberts  
Texas Political Subdivisions  
P.O. Box 803356  
Dallas, Texas 75380  
(w/o enclosures)

Mr. Jeffrey Glatstein  
Sedgwick  
1100 Ridgeway Loop Road, Suite 200  
Memphis, Tennessee 38120  
(w/o enclosures)

Mr. Richard McAbee  
Carl Warren & Company  
11209 North Tatum Boulevard, #130  
Phoenix, Arizona 85028  
(w/o enclosures)

Mr. Jimmy Dryer  
TRISTAR  
5151 Flynn Parkway, Suite 301  
Corpus Christi, Texas 78411  
(w/o enclosures)

Mr. Allen Butler  
Gallagher Bassett Services  
The Gallagher Centre  
Two Pierce Place  
Itasca, Illinois 60143  
(w/o enclosures)

Ms. Rose Cavaliere-Long  
Church & Co., LLC  
12000 Aerospace Avenue, Suite  
110  
Houston, Texas 77034  
(w/o enclosures)