



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2014

Mr. Jeffrey W. Giles  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
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OR2014-17371

Dear Mr. Giles:

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# 537905 (OGC Nos. 21537, 21593, 21594, 21596, 21598, 21606, 21641, 21643, & 51648).

The City of Houston (the "city") received requests from ten different requestors for information related to solicitation numbers S33-T25055 and T23721 for temporary staffing services, including the proposals submitted in response to the solicitations at issue, contracts, a list of current vendors and their rates, and bid tabulations. You state the city will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of A-1 Personnel of Houston, Inc. ("A-1"); AlsoTemps, Inc. ("AlsoTemps"); Bergaila & Associates, Inc. ("Bergaila"); ExecuTeam Staffing ("ExecuTeam"); LaneStaffing; ObjectWin Technology, Inc. ("ObjectWin"); Precision Task Group ("Precision"); S&R Professionals, L.P. ("S&R"); Silver & Associates Consulting, Inc. ("Silver"); and Topp Knotch Personnel, Inc. ("Topp Knotch").<sup>1</sup>

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<sup>1</sup>You state the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office with regard to one of the requests for information. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

Accordingly, you state, and provide documentation showing, you notified A-1, AlsoTemps, Bergaila, ExecuTeam, LaneStaffing, ObjectWin, Precision, S&R, Silver, and Topp Knotch of the request for information and of the right of each 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 representatives for A-1, ExecuTeam, Precision, and Topp Knotch. We have reviewed the submitted information and the submitted arguments.

Initially, we note except for the submitted bid tabulation information, the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-03195 (2011) and 2012-01537 (2012). Open Records Letter No. 2011-03195 pertained to the proposals submitted by A-1, Bergaila, ExecuTeam, ObjectWin, Precision, and S&R, and held the city must withhold (1) the customer information we marked within S&R's proposal under section 552.110(b) of the Government Code; (2) the information we marked within Bergaila's, ExecuTeam's, Precision's, and S&R's proposals under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (3) the information we marked within A-1's proposal under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the insurance policy numbers we marked under section 552.136 of the Government Code, and must release the remaining information at issue in accordance with copyright law.

Open Records Letter No. 2012-01537 pertained to each of the proposals submitted in the instant request for ruling, and held the city must (1) rely on Open Records Letter No. 2011-03195 with respect to the proposals submitted by A-1 and S&R and to portions of the proposal submitted by ObjectWin; (2) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, section 552.101 of the Government Code in conjunction with common-law privacy, and section 552.136 of the Government Code; and (3) release the remaining information in accordance with copyright law.

We have no indication there has been any change in the law, facts, or circumstances with respect to our prior rulings pertaining to the portions of the proposals at issue submitted by AlsoTemps, Bergaila, ExecuTeam, LaneStaffing, ObjectWin, S&R, Silver, and Topp Knotch. Furthermore, except as noted below, we have no indication there has been any change in the law, facts, or circumstances with respect to the portions of the proposals submitted by A-1 and Precision. Accordingly, except as noted below, we conclude the city must rely on Open Records Letter Nos. 2011-03195 and 2012-01537 as previous determinations and withhold or release the proposals submitted by A-1, AlsoTemps, Bergaila, ExecuTeam, LaneStaffing, ObjectWin, Precision, S&R, Silver, and Topp Knotch

in accordance with those rulings.<sup>2</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note in Open Records Letter No. 2011-03195, A-1 did not raise any exceptions to disclosure of pages 23 through 30 of its proposal. Further, in Open Records Letter No. 2012-01537, Precision did not raise any exceptions to disclosure of pages 8 through 11, 13 through 17, 53 through 56, 58, 72, 80 through 95, and 97 through 138. Accordingly, we determined in our previous rulings that, except for information subject to sections 552.101 and 552.136 of the Government Code, the city must release the proposals submitted by A-1 and Precision, including pages 23 through 30 of A-1's proposal and the pages at issue in Precision's proposal. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the previously released information in A-1's and Precision's proposals, unless release of such information is expressly prohibited by law or the information is confidential by law. In this instance, A-1 and Precision now claim the above-listed portions of their proposals are excepted under section 552.110 of the Government Code. We note section 552.110 makes information confidential under the Act. Further, A-1 claims some of the portions of its proposal at issue are excepted under section 552.101 of the Government Code, which applies to confidential information. Therefore, because circumstances have changed with respect to these portions of A-1's and Precision's proposals, the city may not rely upon the prior rulings as previous determinations for these portions of A-1's and Precision's information, and we will address A-1's and Precision's arguments against release of these portions of A-1's and Precision's information. We will also address the public availability of the submitted bid tabulation 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from AlsoTemps, Bergaila, LaneStaffing, ObjectWin, S&R, or Silver explaining why any portion of the bid tabulation information should not be released. Furthermore, neither A-1,

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<sup>2</sup>As our ruling is dispositive for this information, we need not address ExecuTeam's argument under section 552.147 against disclosure of the information at issue.

ExecuTeam, Precision, nor Topp Knotch argues against release of the submitted bid tabulation information. Therefore, we have no basis to conclude any of these third parties has a protected proprietary interest in the bid tabulation 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 city may not withhold the bid tabulation information on the basis of any proprietary interest any of the third parties may have in the information.

We next turn to the submitted arguments against release of the portions of A-1's and Precision's information that are not subject to the previous determinations in Open Records Letter No. 2011-03195 and 2012-01537. A-1 and Precision each states its information at issue is excepted from disclosure under section 552.110 of the Government Code.<sup>3</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) 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 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

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<sup>3</sup>Although A-1 does not cite to section 552.110 of the Government Code in its brief, we understand A-1 to raise this exception based on the substance of its arguments.

Restatement's list of six trade secret factors.<sup>4</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* Open Records Decision No. 552 at 5 (1990). 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).

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* Open Records Decision No. 661 at 5 (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).

As mentioned above, the portions of A-1's and Precision's proposals at issue were the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-03195 and 2012-01537. In the prior rulings, the city notified A-1 and Precision pursuant to section 552.305. Upon review of A-1's and Precision's arguments against release of the information, we held each of these third parties failed to demonstrate any of its information meets the definition of a trade secret and did not demonstrate the necessary factors to establish a trade secret claim for its information. We also concluded

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<sup>4</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 (1982), 306 at 2 (1982), 255 at 2 (1980).

each of these third parties did not demonstrate substantial competitive injury would result from the release of any of its information. Since the issuance of the previous rulings on March 7, 2011, and January 31, 2012, neither A-1 nor Precision has disputed this office's conclusions regarding the release of the portions of their proposals at issue. We presume the city has released the relevant proposals in accordance with the prior rulings. In this regard, we find neither A-1 nor Precision has taken any measures to protect the portions of the requested proposals in order for this office to conclude any portion of the information at issue now either qualifies as a trade secret or contains commercial or financial information, the release of which would cause A-1 or Precision substantial harm. *See* Gov't Code § 552.110; RESTATEMENT OF TORTS § 757 cmt. b; *see also* ORDs 661, 319 at 2, 306 at 2, 255 at 2. Accordingly, we conclude the city may not withhold any of the remaining information in A-1's or Precision's proposals under section 552.110 of the Government Code.

A-1 also raises section 552.101 of the Government Code for the portions of its proposal at issue. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, A-1 has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of A-1's information at issue under section 552.101 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, the city must rely on Open Records Letter Nos. 2011-03195 and 2012-01537 as previous determinations and withhold or release the proposals submitted by AlsoTemps, Bergaila, ExecuTeam, LaneStaffing, ObjectWin, S&R, Silver, and Topp Knotch in accordance with those rulings. With the exception of pages 23 through 30 of A-1's proposal and pages 8 through 11, 13 through 17, 53 through 56, 58, 72, 80 through 95, and 97 through 138 of Precision's proposal, the city must also withhold or release A-1's proposal in accordance with Open Records Letter No. 2011-03195 and must withhold or release Precision's proposal in accordance with Open Records Letter No. 2012-01537. The city must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 537905

Enc. Submitted documents

c: 10 Requestors  
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