ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2014

Mr. Paul Roser
Public Information Office
Humble Independent School District
P.O. Box 2000
Humble, Texas 77347-2000

OR2014-19240

Dear Mr. Roser:

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# 540819.

The Humble Independent School District (the "district") received a request for a copy of two specified bid proposals along with several categories of information related to the bidding process. You state you have released some information. You state release of the submitted information may implicate the proprietary interests of Yaffe/Deutser and Alpha Media. Accordingly, you state you notified Yaffe/Deutser and Alpha Media 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. *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 relay on interested third party to raise and explain applicability of the exception in the Act to certain circumstances). We have received comments from Yaffe/Deutser and Alpha Media. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Yaffe/Deutser and Alpha Media seek to withhold information not submitted by the district for our review. We note this ruling does not address information related to these third parties beyond what the district submitted to us for review and is limited to the information the district submitted as responsive to the instant request. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Yaffe/Deutser raises section 552.104 of the Government Code, which excepts "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Accordingly, we will not consider Yaffe/Deutser's claim under this section. Furthermore, the district does not raise section 552.104 as an exception to disclosure. Therefore, the district may not withhold any of the submitted information under section 552.104 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 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.[1] RESTATEMENT OF TORTS § 757 cmt. b. This

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[1]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).

office must accept a claim 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).

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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, 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, release of requested information would cause that party substantial competitive harm).

We understand Yaffe/Deutser to argue portions of its information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we find Yaffe/Deutser has failed to establish a *prima facie* case that any portion of its information meets the definition of a trade secret. We further find Yaffe/Duetser has not demonstrated the necessary factors to establish a trade secret claim for its information. *See* ORD 402. Therefore, none of Yaffe/Deutser's information may be withheld under section 552.110(a).

Yaffe/Deutser and Alpha Media argue their information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Alpha Media has demonstrated the information we have marked constitutes commercial or financial information, the release of which would cause substantial competitive injury. Thus, the district must withhold this information under section 552.110(b) of the Government Code. However, we find Yaffe/Deutser and Alpha Media have not demonstrated that the release of any of the remaining information would result in substantial harm to their competitive positions. *See* Open Records Decision Nos. 661, 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 none of the remaining information may be withheld under section 552.110(b).

In summary, the district must withhold the information we have marked under section 552.110(b). The remaining 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,

Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 540819

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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