



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 23, 2014

Ms. Sara Abbott McEown  
Counsel for the Fort Worth Transportation Authority  
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901 Main Street, Suite 6000  
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OR2014-23345

Dear Ms. McEown:

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# 549023.

The Fort Worth Transportation Authority (the "authority"), which you represent, received a request for proposals submitted in response to RFP 14-T039, Sales Tax Review Services, as well as the awarded contract. The authority claims the requested information is excepted from disclosure under section 552.110 of the Government Code. The authority also states, and provides documentation showing, it notified MuniServices, L.L.C. of the authority's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 correspondence from PRA Group, Inc. ("PRA"), which is the parent company of MuniServices, L.L.C., objecting to the release of its information under sections 552.101 and 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision

Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, the authority must release it, notwithstanding any expectations or agreement specifying otherwise.

We next note the authority did not submit the requested contract. We assume, to the extent any additional responsive information existed when the authority received the request for information, the authority has released it to the requestor. If not, then the authority must do so immediately. *See* Gov’t Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

PRA 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. However, PRA does not cite to any specific law, and we are not aware of any, that makes any portion of the submitted information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public). Therefore, we conclude the authority may not withhold any portion of the submitted information under section 552.101 of the Government Code.

The authority and PRA assert the information at issue is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. Accordingly, we consider only the arguments we received from PRA under section 552.110. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure “[a] trade secret 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. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). 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.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude section 552.110(a) applies 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. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) excepts from disclosure "[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

Upon review, we find PRA has not shown any of the submitted information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See* Gov't Code § 552.110(a). We also find PRA has failed to establish release of the information at issue would cause it substantial competitive injury. *See id.* § 552.110(b). Therefore, the authority may not withhold any of the information pursuant to section 552.110.

The submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or

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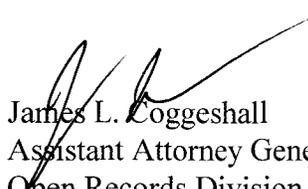
<sup>1</sup>The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of the company; (2) the extent to which it is known by employees and others involved in the company's business; (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).

maintained by or for a governmental body is confidential.”<sup>2</sup> Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the authority must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The authority must release the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 549023

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Judith S. Scott  
Executive Vice President and General Counsel  
PRA Group, Inc.  
120 Corporate Boulevard  
Norfolk, Virginia 23502  
(w/o enclosures)

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).