



January 7, 2015

Mr. Billy Myers  
Chief Financial Officer  
Greenville Independent School District  
P.O. Box 1022  
Greenville, Texas 75401-1022

OR2015-00205

Dear Mr. Myers:

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# 549403.

The Greenville Independent School District (the "district") received a request for a copy of the district's current food/dining service contract.<sup>1</sup> Although you take no position with respect to the public availability of the requested information, you notified Compass Group USA, Inc., ("Compass") of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by Compass. We have considered its arguments and reviewed the submitted information.

---

<sup>1</sup>You have not submitted a copy of the original written request for information, so we take our description of the request from a copy provided to this office by the third-party. *See* Gov't Code § 552.301(e). This third-party's interests provide a compelling reason for us to consider its arguments against disclosing the information. *See id.* § 552.302.

Section 552.110 of the Government Code 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.<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* Open Records Decision No. 552 at 5 (1990). 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. Open Records Decision No. 402 (1983).

---

<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).

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. *See id.*; *see also* Open Records Decision No. 661 at 5 (1999).

Upon review, we find Compass has not demonstrated any of the submitted information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim. *See* RESTATEMENT OF TORTS § 757 cmt. b, ORD 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim). 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, 232 (1979), 217 (1978). Accordingly, the district may not withhold any of Compass’s information under section 552.110(a) of the Government Code.

Upon further review, we find Compass has not demonstrated any of the submitted information constitutes commercial or financial information, the disclosure of which would cause it substantial competitive harm. *See* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 319 at 3 (1982) (information relating to organization and personnel not ordinarily excepted from disclosure under statutory predecessor to section 552.110); *see generally* Dep’t of Justice Guide to the Freedom of Information Act 344–45 (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 district may not withhold any of Compass’s information under section 552.110(b) of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.”<sup>3</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The district must release the remaining information.

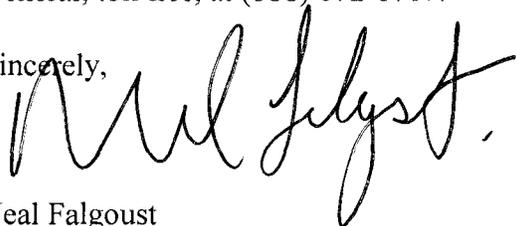
---

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* 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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

Ref: ID# 549403

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Matthew S. Burstein  
Corporate Counsel  
Compass Group  
3 International Drive  
Rye Brook, New York 10573  
(w/o enclosures)