



January 16, 2015

Ms. Cynthia Rincón
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard, Suite 101
Sugar Land, Texas 77479

OR2015-00947

Dear Ms. Rincón:

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# 550354 (Fort Bend I.S.D. ORR 2014-15-382).

The Fort Bend Independent School District (the "district") received a request for all proposals submitted for Request for Proposal 14-048GT, excluding the requestor's company's proposal. You state, although the district takes no position with respect to the submitted information, its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.¹ See Gov't Code § 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) (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 reviewed the submitted information and the arguments submitted by representatives of Apex, Compass, and Connections.

¹The third parties notified pursuant to section 552.305 are the following: Apex Learning ("Apex"); CompassLearning, Inc. ("Compass"); Connections Education L.L.C. ("Connections"); Edgenuity, Inc.; and LoudCloud Systems, Inc.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only Apex, Compass, and Connections explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *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.

Connections seeks to withhold some of its information under common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note that an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Upon review, we find Connections has failed to demonstrate the information it seeks to withhold is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold the information at issue under section 552.101 on that basis.

Apex, Compass, and Connections argue their information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial 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. 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 763 (Tex.), *cert. denied*, 358 U.S. 898 (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.² RESTATEMENT OF TORTS § 757 cmt. b (1939). This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. 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).

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.*; ORD 661 at 5-6.

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

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

Apex, Compass, and Connections contend some of their information is commercial or financial information, release of which would cause substantial competitive harm to the companies. Upon review, we conclude Apex and Compass have established the release of their customer information would cause the companies substantial competitive injury. Accordingly, to the extent the customer information of Apex and Compass within the submitted information is not publicly available on the companies' websites, the district must withhold the customer information at issue under section 552.110(b). To the extent the customer information of Apex and Compass is publicly available on the companies' websites, the district may not withhold such information under section 552.110(b). In that event, we will address the arguments of Apex and Compass under section 552.110(a) for their customer information that is publicly available on the companies' websites. Additionally, we find Apex, Compass, and Connections have each established the release of some of their information, which we have marked, would cause the companies substantial competitive injury. Accordingly, the district must withhold the information we have marked under section 552.110(b).³ However, we find Apex, Compass, and Connections have not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their remaining information at issue would cause the companies substantial competitive harm. *See* Open Records Decision Nos. 509 at 5 (1988) (because 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), 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude the district may not withhold the remaining information under section 552.110(b).

Apex, Compass, and Connections also claim some of their remaining information constitutes trade secrets. Upon review, we find Connections has established a *prima facie* case its customer information constitutes trade secret information. Accordingly, to the extent the customer information of Connections is not publicly available on the company's website, the district must withhold the customer information of Connections under section 552.110(a) of the Government Code. To the extent the customer information is publicly available on the company's website, the district may not withhold such information under section 552.110(a). To the extent the customer information of Apex and Compass is publicly available on the companies' websites and not excepted from disclosure under section 552.110(b) of the Government Code, the district may not withhold such information under section 552.110(a). Additionally, we find Apex, Compass, and Connections have failed to demonstrate the remaining information for which they assert section 552.110(a) meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

for this information. Accordingly, the district may not withhold the remaining information at issue on the basis of section 552.110(a).

Section 552.136 of the Government Code states, in part, “Notwithstanding 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(b); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the district must withhold the insurance policy numbers in the submitted information under section 552.136.

Compass notes and we note some of the remaining information appears to be subject to copyright law. 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 the customer information of Apex and Compass is not publicly available on the companies’ websites, the district must withhold the customer information of Apex and Compass under section 552.110(b) of the Government Code. The district must withhold the information we have marked under section 552.110(b) of the Government Code. To the extent the customer information of Connections is not publicly available on the company’s website, the district must withhold the customer information of Connections under section 552.110(a) of the Government Code. The district must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The district must release the remaining information; however, any information protected by copyright may only be released 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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 550354

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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