



January 27, 2015

Ms. Dylbia L. Jefferies Vega  
Civil Legal Division  
Cameron County Commissioners Court  
1100 East Monroe Street  
Brownsville, Texas 78520

OR2015-01547

Dear Ms. Vega:

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# 551432.

The Cameron County Purchasing Department (the "county") received a request for the winning proposal submitted in response to a specified request for proposals. Although you take no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Deer Oaks EAP Services, LLC ("Deer Oaks"). Accordingly, you state you notified Deer Oaks 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 (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) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from Deer Oaks. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of the specified winning proposal. The county need not release nonresponsive information in response to this request, and this ruling will not address that information.

We understand Deer Oaks to argue some of its 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 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>1</sup> RESTATEMENT OF TORTS § 757 cmt. b. This 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). We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply

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<sup>1</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).

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 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).

We understand Deer Oaks to claim portions of the responsive information constitute commercial or financial information excepted under section 552.110(b) of the Government Code. Deer Oaks states the release of the information it seeks to withhold under section 552.110(b) would cause substantial competitive harm. Upon review, we conclude Deer Oaks has established the release of most its client information would cause it substantial competitive injury. Accordingly, to the extent this client information is not publicly available on Deer Oaks’s website, the county must withhold the client information at issue, which we have marked, under section 552.110(b).<sup>2</sup> However, we note some of the client information Deer Oaks seeks to withhold pertains to a client who appears in a testimonial within the submitted documents. Thus, we find Deer Oaks has not established the information pertaining to this client is excepted from disclosure under section 552.110. *See* ORD 319 at 3 (statutory predecessor to section 552.110 generally not applicable to professional references). Further, we find Deer Oaks has not provided specific factual evidence that substantial competitive injury would likely result from the release of the remaining information at issue. In addition, we note the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act, 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Thus, we find the county may not withhold any of the remaining responsive information pursuant to section 552.110(b) of the Government Code.

We also understand Deer Oaks to assert portions of the remaining responsive information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we find Deer Oaks has failed to establish a *prima facie* case any portion of the remaining responsive information meets the definition of a trade secret, nor has Deer Oaks demonstrated the necessary factors to establish a trade secret claim for the remaining

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<sup>2</sup>As our ruling is dispositive, we need not address Deer Oaks’s remaining argument against disclosure of this information.

information. *See* ORD 402. Therefore, none of the remaining responsive information may be withheld under section 552.110(a).

In summary, to the extent the client information we have marked is not publicly available on Deer Oaks's website, the county must withhold the client information we have marked under section 552.110(b). The county must release the remaining responsive 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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 551432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)