



February 27, 2015

Mr. Raul Casso
City Attorney
Office of the City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2015-03967

Dear Mr. Casso:

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# 556960 (PIR nos. W004415, W004416, W004417).

The City of Laredo (the "city") received three requests from the same requestor for three specified quarterly reports submitted by Jerry Resendez Enterprises d/b/a Trashco ("Trashco") to the city. The city does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the city indicates, and provides documentation showing, it notified Trashco of the city's receipt of the request for information and of Trashco's 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 comments from Trashco objecting to the release of the requested information under the Act. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and arguments.

The requestor alleges the city failed to comply with section 552.301 of the Government Code. Pursuant to section 552.302 of the Government Code, a governmental body's failure

to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision Nos. 319 (1982), 177(1977). A compelling reason exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The requestor argues the interests of Trashco are not compelling reasons to withhold the information at issue because (1) city ordinance no. 2001-O-228 requires the information to be provided in an open city council meeting; (2) Trashco waived its privacy interests pursuant to section 552.002 of the Government Code when it agreed to the terms and conditions of the city ordinance no. 2001-O-228 by entering into the agreement at issue; and (3) the term “proprietary interests” as used in the Government Code is for legislative purposes under section 552.008(b-2).¹ However, the requestor has not directed us to any portion of city ordinance no. 2001-O-228 that either requires the submitted information to be released or prohibits Trashco from asserting an exception to disclosure under the Act. *See* Gov't Code § 552.305. We also note section 552.002 of the Government Code does not provide for the release of information but, instead, defines “public information” for purposes of the Act. *Id.* § 552.002. In addition, section 552.008 of the Government Code addresses access to requested information to individual members, agencies, or committees of the Texas Legislature, but it does not address such access to members of the public. *Id.* § 552.008. Therefore, regardless of whether the city failed to comply with section 552.301, because the interests of Trashco can provide a compelling reason to withhold information, we will consider the submitted arguments.

Trashco raises section 552.104 of the Government Code, which excepts from disclosure information that, if released, would give an advantage to a competitor or bidder. *Id.* § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). The city did not assert section 552.104. Therefore, the city may not withhold any of the information at issue pursuant to that section. *See* ORD 592 (governmental body may waive statutory predecessor to section 552.104).

Section 552.110 of the Government Code protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or

¹Although the requestor raises section 552.08(b-2) for his arguments, we understand he intended to raise section 552.008(b-2) instead.

financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code exempts 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.² 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) exempts 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

²The 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).

§ 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 Trashco has established a *prima facie* case its customer information constitutes trade secret information for purposes of section 552.110(a). Nevertheless, to the extent Trashco has published any of the customer information at issue on its website, this information is not confidential under section 552.110. Accordingly, the city must withhold Trashco's customer information in the submitted documents under section 552.110(a), provided Trashco has not published the information on its website. We also conclude Trashco has shown the submitted pricing information, which we have marked, is excepted from disclosure under section 552.110(b). However, we find Trashco has not shown any of the remaining information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See id.* § 552.110(a); ORD 402 at 2-3. We also conclude Trashco has failed to establish release of any of the remaining information, including any customer information published on Trashco's website, would cause it substantial competitive injury. *See id.* § 552.110(b). Therefore, the city may not withhold any of the remaining information under section 552.110.

We note section 552.130 of the Government Code is applicable to some of the submitted information.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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 maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). The city must withhold the information we have marked under section 552.136 of the Government Code.

To conclude, the city must withhold Trashco's customer information in the submitted documents under section 552.110(a) of the Government Code, provided Trashco has not published the information on its website. The city must also withhold the information we have marked under sections 552.110(b), 552.130, and 552.136 of the Government Code. The city must release the remaining information.

³The 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).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 556960

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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