



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 13, 2015

Ms. JoAnna G. Talley
Public Officer
Fort Worth Independent School District
Office of Legal Services
100 North University Drive, Suite SW 172
Fort Worth, Texas 76107

OR2015-04905

Dear Ms. Talley:

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# 558169.

The Fort Worth Independent School District (the "district") received a request for specified information pertaining to RFP #15-82 Toner/Ink Products.¹ The district does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the district states, and provides documentation showing, it notified the following third parties of the district's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released: Beepsmart Communications; Beyono Technology; Carolina Imaging & Computer Products, Inc.; CESCO, Inc. ("Cesco"); Coast to Coast Computer Products, Inc.; CPI One Point; CVR Computer Supplies; Encon Systems, Inc.; Laserlink International, Inc.; Office Depot, Inc.; MTS Partners, Inc.; The Office Pal; Precision Business Machines, Inc.; Rasix Computer Center Inc.; Tech Dogs, L.L.C.; The Tree House, Inc.; and Xerox Corporation. *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*

¹We understand the requestor does not seek access to its own proposal.

to raise and explain applicability of exception in the Act in certain circumstances). In correspondence to this office, Cesco asserts some of its information is excepted from disclosure under section 552.131 of the Government Code. We have reviewed the submitted arguments and information.

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) 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, only Cesco has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of the remaining third parties, and the district may not withhold any portion of it on that basis. *See* 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, 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.

Cesco raises section 552.131 of the Government Code, which provides, in part, the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

Gov't Code § 552.131(a)-(b). We note section 552.131(a) is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). 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 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 552.131(a)(1) 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 552.131(a)(2) 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* ORD 661 at 5-6 (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

Upon review, we find Cesco 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 § 552.131(a)(1). We also find Cesco has failed to establish release of the information at issue would cause it substantial competitive injury. *See id.*

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).

§ 552.131(a)(2). Further, Cesco has not explained how any of the submitted information relates to economic development negotiations involving it and the district. Accordingly, the district may not withhold any of Cesco's information under section 552.131(a) of the Government Code. Furthermore, section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the district does not assert section 552.131(b) as an exception to disclosure, the district may not withhold any of Cesco's information on that ground.

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 maintained by or for a governmental body is confidential."³ 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 district must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. 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.

To conclude, 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, but may only release any copyrighted information 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

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).

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# 558169

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Quazi Faruque
Beepsmart Communications
1801 Gateway Boulevard # 203
Richardson, Texas 75080
(w/o enclosures)

Mr. Eugene C. Weisben
Beyono Technology
14697 East Easten Avenue #6
Centennial, Colorado 80112
(w/o enclosures)

Ms. Mary Jo Painter
Carolina Imaging & Computer Products, Inc.
4210 Beechwood Drive
Greensboro, North Carolina 27410
(w/o enclosures)

Mr. Billie Bryant Schultz
President & CEO
CESCO, Inc.
11969 Plano Road, Suite 130
Dallas, Texas 75243
(w/o enclosures)

Ms. Angela Sullivan
Coast to Coast Computer Products, Inc.
4277 Valley Fair Street
Simi Valley, California 93063
(w/o enclosures)

Mr. Kevin Goff
CPI One Point
1301 Ridgeview Suite 100
Lewisville, Texas 75057
(w/o enclosures)

Mr. Steve Yuhas
CVR Computer Supplies
1018 Haddonfield Berlin Road
Cherry Hill, New Jersey 08034
(w/o enclosures)

Mr. Kirti Singh
Laserlink International, Inc.
1310 63rd Street
Emeryville, California 94608
(w/o enclosures)

Mr. Mark Warnell
MTS Partners, Inc.
980 Magnolia Avenue, Suite #5
Larkspur, California 94939
(w/o enclosures)

Mr. Terry F. Massey
Precision Business Machines, Inc.
1509 Falcon Drive, Suite 106
Desoto, Texas 75115
(w/o enclosures)

Mr. Erich Von Beamesderfer
Tech Dogs, LLC
2700 Research Drive, Suite 125
Plano, Texas 75074
(w/o enclosures)

Mr. Timothy Williams
Xerox Corporation
1303 Ridgeview Drive, Building 300
Lewisville, Texas 75057
(w/o enclosures)

Mr. Chas Hovitz
Encon Systems, Inc.
420 North Town East Boulevard
Sunnyvale, Texas 75182
(w/o enclosures)

Office Depot, Inc.
6600 North Military Road
Boca Raton, Florida 33496
(w/o enclosures)

Mr. Latzie Tober
The Office Pal
P.O. Box 2
Lakewood, New Jersey 08701
(w/o enclosures)

Mr. Ashok C. Shah
Rasix Computer Center, Inc.
3519 Main Street Suite 401
Chula Vista, California 91911-0801
(w/o enclosures)

Mr. David Rizzo
The Tree House, Inc.
P.O. Box 413
Norwood, Massachusetts 02062
(w/o enclosures)