



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 18, 2015

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

OR2015-05231

Dear Mr. Raul 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# 556965 (City Request Nos. W004418, W004419, and W004420).

The City of Laredo (the "city") received three requests from the same requestor for three specified quarterly reports submitted by Laredo Clean Sweep d/b/a Southern Sanitation Services, Inc. ("Southern Sanitation") to the city. Although you do not take any position as to whether the submitted information is excepted from disclosure under the Act, you state, and provide documentation showing, you notified Southern Sanitation of the request for information and 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); 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 comments from Southern Sanitation. 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 id.* § 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 Southern Sanitation are not compelling reasons to withhold the information at issue because (1) city ordinance no. 96-O-066 requires the information to be provided in an open city council meeting; (2) Southern Sanitation 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. 96-O-066 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).<sup>1</sup> However, the requestor has not directed us to any portion of city ordinance no. 96-O-066 that either requires the submitted information to be released or prohibits Southern Sanitation 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 Southern Sanitation can provide a compelling reason to withhold information, we will consider the submitted arguments.

Next, we note Southern Sanitation objects to disclosure of information the city has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

We understand Southern Sanitation to raise 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 id.* § 552.110(a)-(b). Section 552.110(a) excepts from disclosure “[a] trade secret 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. *Hyde Corp. v. Huffines*, 314

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

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.<sup>2</sup> 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) excepts 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 § 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).

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<sup>2</sup>The 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).

We understand Southern Sanitation to assert portions of its information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we find Southern Sanitation has established a *prima facie* case its customer information constitutes trade secret information for purposes of section 552.110(a). Nevertheless, to the extent Southern Sanitation 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 Southern Sanitation's customer information in the submitted documents under section 552.110(a), provided Southern Sanitation has not published the information on its website.<sup>3</sup> However, we find Southern Sanitation has failed to establish a *prima facie* case any portion of the remaining information meets the definition of a trade secret. We further find Southern Sanitation has not demonstrated the necessary factors to establish a trade secret claim for any of its remaining information. *See* ORD 402. Therefore, the city may not withhold any of the remaining information under section 552.110(a).

We further understand Southern Sanitation to assert portions of its information consist of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Southern Sanitation has demonstrated the release of its pricing information, which we have marked, would cause the company substantial competitive injury. Accordingly, the city must withhold the information we have marked under section 552.110(b). However, we find Southern Sanitation has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining information would cause the company substantial competitive harm. Therefore, the city may not withhold any of the remaining information under section 552.110(b).

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."<sup>4</sup> 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 Southern Sanitation's customer information in the submitted documents under section 552.110(a) of the Government Code, provided Southern Sanitation has not published the information on its website. The city must withhold the information we have marked under section 552.110(b) of the Government Code and the

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

<sup>4</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).

information we have marked under section 552.136 of the Government Code. The city must release the remaining 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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/cbz

Ref: ID# 556965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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