KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Ms. E. Barry Gaines
Legal Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2015-05248

Dear Ms. Gaines:

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# 556812 (HCAD internal reference no. 14-4750).

The Harris County Appraisal District (the "district") received a request for a specified agent table. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You state the release of the submitted information may implicate the interests of numerous third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the requests for information and of their rights to submit arguments stating why their 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 Novotny and Company ("Novotny"). We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the submitted information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-13497A (2014) and 2014-22185 (2014). In those rulings, we concluded the district (1) must withhold the customer information of certain third parties, including Novotny, under section 552.110(a) of the Government Code; however, to the extent the customer information is publicly available on these parties' websites, it may not be withheld under section 552.110(a) of the Government Code; and release the remaining information. We have no indication the law, facts, and circumstances on which the prior rulings were

based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the district must continue to rely on Open Records Letter Nos. 2014-13497A and 2014-22185 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You state some of the information at issue was not previously ruled upon. Thus, we will address the submitted arguments for the submitted information not subject to Open Records Letter Nos. 2014-13497A and 2014-22185.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from Novotny. Thus, the remaining third parties have not demonstrated they have protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)-(b); 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. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Although you raise section 552.110, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See* Gov't Code § 552.110. Thus, we do not address the district's argument under section 552.110 on behalf of any of the third parties. However, Novotny contends 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 id.* § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person that are 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 the following:

> 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.[1] 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* ORD 552 at 5. 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).

Novotny asserts its client information constitutes trade secret information under section 552.110(a) of the Government Code. Upon review, we find Novotny has established a *prima facie* case its customer information constitutes trade secret information for purposes of section 552.110(a). Therefore, the district must withhold Novotny's customer information under section 552.110(a) of the Government Code; however, to the extent the customer information is publicly available on Novotny's website, it may not be withheld under section 552.110(a).[2]

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the district must continue to rely on Open Records Letter Nos. 2014-13497A and 2014-22185 as previous determinations and withhold or

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[1]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).

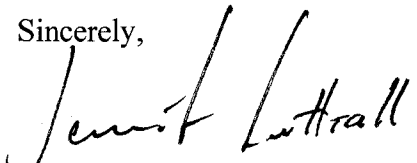
[2]As our ruling is dispositive for this information, we need not address Novotny's remaining arguments against disclosure.

release the identical information in accordance with those rulings. The district must withhold Novotny's customer information under section 552.110(a) of the Government Code; however, to the extent the customer information is publicly available on Novotny's website, it may not be withheld under section 552.110(a) of the Government Code. The remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 556812

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)

Mr. Olan J. Boudreaux
For John Novotny, Inc. D/b/a Novotny & Company
The Boudreaux Law Firm, P.C.
3411 Richmond Avenue, Suite 400
Houston, Texas 77046
(w/o enclosures)

ABC Tax Solutions LLC
17439 Ivy Stream Drive
Houston, Texas 77095-6990
(w/o enclosures)

Advalorem Tax Management
1988 Wilcrest Drive, Suite E
Houston, Texas 77042-2671
(w/o enclosures)

Advaloremtax.net
811 Bradford Avenue, Suite 4A
Kemah, Texas 77565-2900
(w/o enclosures)

Advantax Group LLC
200 West River Drive
Saint Charles, Illinois 60174-5535
(w/o enclosures)

Advent Advisors
7200 Pinemont Drive, Apt 1216
Houston, Texas 77040-6613
(W/o Enclosures)

Altus Group
P.O. Box 92129
Southlake, Texas 76092-0102
(W/o Enclosures)

Altus Group
21001 North Tatum Boulevard, Suite
1630-630
Phoenix, Arizona 85050-4242
(W/o Enclosures)

Ambrose & Associates
16545 Village Drive, Bldg A
Jersey Village, Texas 77040-1158
(W/o Enclosures)

American Ad Valorem Tax Consultants Inc
P.O. Box 6330
Corpus Christi, Texas 78466-6330
(W/o Enclosures)

American Prop Tax Svc Inc
12702 Century Drive, Suite A
Stafford, Texas 77477-4227
(W/o Enclosures)

Appeal Property Tax Com
811 Bradford Avenue, Suite 4A
Kemah, Texas 77565-2900
(W/o Enclosures)

Assessment Advisors
2408 Timberloch Place, Suite B-3
Spring, Texas 77380
(W/o Enclosures)

Assessment Technologies
121 Interpark Boulevard, Suite 308
San Antonio, Texas 78216-1852
(W/o Enclosures)

Associated Tax Appraisers
P.O. Box 91119
Austin, Texas 78709-1119
(W/o Enclosures)

B R Lawson & Co
5700 NW Central Drive, Suite 220
Houston, Texas 77092-2047
(W/o Enclosures)

Baden Tax Management LLC
6920 Pointe Inverness Way, Suite 301
Fort Wayne, Indiana 46804-7926
(W/o Enclosures)

Bettencourt Tax Advisors LLC
730 North Post Oak Road, Suite 400
Houston, Texas 77024-3838
(W/o Enclosures)

Blackwell & Duncan Pllc
500 North Central Expressway, Suite 427
Plano, Texas 75074-6730
(W/o Enclosures)

BPP Tax Group LLC
P.O. Box 722441
Houston, Texas 77272-2441
(W/o Enclosures)

Burnitt Property Tax Advisors
16840 Barker Springs Road, Suite 301
Houston, Texas 77084-5039
(W/o Enclosures)

Cantrell Mcculloch Inc
12750 Merit Drive, Suite 400
Dallas, Texas 75251-1283
(W/o Enclosures)

Carter & Associates Professional Tax Services
P.O. Box 451265
Houston, Texas 77245-1265
(W/o Enclosures)

Cbiz Mhm Llc
5100 Poplar Avenue, Suite 2900
Memphis, Tennessee 38137-2902
(W/o Enclosures)

Chevron USA Inc
P.O. Box 285
Houston, Texas 77001-0285
(W/o Enclosures)

Clarke & Co
13201 Northwest Freeway, Suite 503
Houston, Texas 77040-6024
(W/o Enclosures)

Cochran & Company
13636 Breton Ridge Street, Suite D
Houston, Texas 77070-6077
(W/o Enclosures)

Complex Pts
1197 Patrick Road
Napa, California 94558-9743
(W/o Enclosures)

Complex Pts LLC
18 Turtle Creek Manor
Sugar Land, Texas 77479-5945
(W/o Enclosures)

Consolidated Tax Serv Inc
P.O. Box 1807
Henderson, Texas 75653-1807
(W/o Enclosures)

Corbett & Company
14818 Evergreen Ridge Way
Houston, Texas 77062-2335
(W/o Enclosures)

Cozean Mary Lou
1341 Afton Street
Houston, Texas 77055-6940
(W/o Enclosures)

CTMI LLC
12720 Hillcrest Road, Suite 1010
Dallas, Texas 75230-2058
(W/o Enclosures)

Cummings Westlake Llc
12837 Louetta Road, Suite 201
Cypress, Texas 77429-5611
(W/o Enclosures)

Cushman & Wakefield
1330 Post Oak Boulevard, Suite 2700
Houston, Texas 77056-3054
(W/o Enclosures)

David a Young & Associates
P.O. Box 461312
San Antonio, Texas 78246-1312
(W/o Enclosures)

Deloney & Associates
143 County Road 2343
Dayton, Texas 77535-3299
(W/o Enclosures)

DLC Enterprises
15972 Post Oak Drive
Plantersville, Texas 77363-8183
(W/o Enclosures)

Ducharme McMillen & Assoc
12710 Research Boulevard, Suite 305
Austin, Texas 78759-4380
(W/o Enclosures)

Duff & Phelps LLC
P.O. Box 2629
Addison, Texas 75001-2629
(W/o Enclosures)

Easley Resource Group LLC
101 East Park Boulevard, Suite 600
Plano, Texas 75074-8818
(W/o Enclosures)

Ernst & Young
Property Tax Department
2323 Victory Avenue, Suite 2000
Dallas, Texas 75219-7686
(W/o Enclosures)

Ernst & Young LLP
P.O. Box 52307
Atlanta, Georgia 30355-0307
(W/o Enclosures)

Experis
525 West Monroe Street, Suite 1500
Chicago, Illinois 60661-3649
(W/o Enclosures)

Flagship Property Tax
8222 Antoine Drive, Suite 219
Houston, Texas 77088-2514
(W/o Enclosures)

Frank & Associates Inc
22136 Westheimer Parkway, Suite 520
Katy, Texas 77450-8296
(W/o Enclosures)

George McElroy & Assoc
P.O. Box 565048
Dallas, Texas 75356-5048
(W/o Enclosures)

Gil Masters & Assoc Inc
P.O. Box 708
Lufkin, Texas 75902-0708
(W/o Enclosures)

Grant Thornton Llp
700 Milam Street, Suite 300
Houston, Texas 77002-2848
(W/o Enclosures)

Greenback Cost Recovery
P.O. Box 22656
Houston, Texas 77227-2656
(W/o Enclosures)

Harding & Carbone Inc
3903 Bellaire Boulevard
Houston, Texas 77025-1119
(W/o Enclosures)

Hunter Group CPA LLC
17-17 Route 208
Fair Lawn, New Jersey 7410
(W/o Enclosures)

Industrial Complex Prop GP
6200 UTSA Boulevard, Bldg II
San Antonio, Texas 78249-1617
(W/o Enclosures)

Industrial Tax Consulting
901 South Mo Pac Expressway, Suite 2-410
Austin, Texas 78746-5776
(W/o Enclosures)

Industry Consulting Group
P.O. Box 659
Wichita Falls, Texas 76307-0659
(W/o Enclosures)

J Joseph Consulting Inc
21732 Hardy Oak Boulevard, Suite 101
San Antonio, Texas 78258-4843
(W/o Enclosures)

Jim Schwalls & Associates
P.O. Box 3075
McKinney, Texas 75070-8182
(W/o Enclosures)

Ken E Andrews & Co
1900 Dalrock Road
Rowlett, Texas 75088-5526
(W/o Enclosures)

Kirkwood & Darby Inc
307 West 7th Street, Suite 1110
Fort Worth, Texas 76102-5199
(W/o Enclosures)

KPMG LLP
811 Main Street, Suite 4500
Houston, Texas 77002-6100
(W/o Enclosures)

Kurz Group Inc
Ste 1370 Lb 21
8333 Douglas Avenue
Dallas, Texas 75225-5845
(W/o Enclosures)

L B Walker & Assoc
13111 Northwest Freeway, Suite 125
Houston, Texas 77040-6321
(W/o Enclosures)

Marvin F Poer & Co
13201 Northwest Freeway, Suite 550
Houston, Texas 77040-6024
(W/o Enclosures)

Mattox Terrell & Associates
1614 Avenue B
Katy, Texas 77493-1611
(W/o Enclosures)

Merit Advisors LP
P.O. Box 330
Gainesville, Texas 76241-0330
(W/o Enclosures)

Meritax LLC
14901 Quorum Drive, Suite 740
Dallas, Texas 75254-7524
(W/o Enclosures)

Michael Saegert
3816 Oberlin Street
Houston, Texas 77005-3634
(W/o Enclosures)

Mkp Price & Co P C
P.O. Box 2753
Humble, Texas 77347-2753
(W/o Enclosures)

Morrison & Head LP
P.O. Box 1888
Boerne, Texas 78006-6888
(W/o Enclosures)

Msc Property Tax Cons
P.O. Box 821166
Houston, Texas 77282-1166
(W/o Enclosures)

Myska & Vandervoort Llc
200 South 10th Street
Richmond, Texas 77469-3040
(W/o Enclosures)

National Realty Consultants
4543 Post Oak Place Drive, Suite 232
Houston, Texas 77027-3103
(W/o Enclosures)

Nationwide Consulting
P.O. Box 548
Glen Rock, New Jersey 07452-0548
(W/o Enclosures)

National Bureau of Property Admin
180 North Stetson Avenue, Suite 2525
Chicago, Illinois 60601-6724
(W/o Enclosures)

Nettles & Co
7155 Old Katy Road, Suite S222
Houston, Texas 77024
(W/o Enclosures)

NIW Investments LP
P.O. Box 741109
Houston, Texas 77274-1109
(W/o Enclosures)

O'Connor & Associates
2200 North Loop West, Suite 200
Houston, Texas 77018-1754
(W/o Enclosures)

Outsourcing Solutions Group
630 North Central Expressway, Suite A
Plano, Texas 75074-6897
(W/o Enclosures)

Pace Property Tax Services
P.O. Box 3395
Humble, Texas 77347-3395
(W/o Enclosures)

Paradigm Tax Group
13231 Champion Forest Drive, Suite 310
Houston, Texas 77069-2648
(W/o Enclosures)

Paula R Mclean
P.O. Box 6063
Kingwood, Texas 77325-6063
(W/o Enclosures)

Peter J Indurante
1930 Village Center Circle, Suite 3 PMB 442
Las Vegas, Nevada 89134-6245
(W/o Enclosures)

Popp Hutcheson PLLC
1301 South Mopac Ste 430
Austin, Texas 78746
(W/o Enclosures)

Premier Property Tax
14655 Northwest Fwy Ste 140
Houston, Texas 77040-4051
(W/o Enclosures)

Premier Tax Service
P.O. Box 2388
Cypress, Texas 77410-2388
(W/o Enclosures)

Property Tax Compliance
P.O. Box 2250
Universal City, Texas 78148-1250
(W/o Enclosures)

Property Tax Counselors
P.O. Box 3075
McKinney, Texas 75070-8182
(W/o Enclosures)

Property Tax Solutions
2437 Bay Area Blvd # 151
Houston, Texas 77058-1519
(W/o Enclosures)

Property Valuation Service
14400 Metcalf Avenue
Overland Park, Kansas 66223-2989
(W/o Enclosures)

Protrac Inc
P.O. Box 941628
Houston, Texas 77094-8628
(W/o Enclosures)

R E Mcelroy Inc
3609 Smith Barry Road, Suite 100
Pantego, Texas 76013-4631
(W/o Enclosures)

Rainbolt, Alexander
19 Briar Hollow Lane, Suite 105
Houston, Texas 77027-2832
(W/o Enclosures)

Roberts Tax Appeals
P.O. Box 924196
Houston, Texas 77292-4196
(W/o Enclosures)

Ryan & Company
2800 Post Oak Boulevard, Suite 4200
Houston, Texas 77056-6139
(W/o Enclosures)

Ryan Llc
13155 Noel Road, Suite 100
Dallas, Texas 75240-5050
(W/o Enclosures)

Ryan Tr
100 Congress Avenue, Suite 1900
Austin, Texas 78701-2750
(W/o Enclosures)

Savage Savage & Brown
P.O. Box 22845
Oklahoma City, Oklahoma 73123-1845
(W/o Enclosures)

SC&H State & Local Tax
910 Ridgebrook Road
Sparks Glencoe, Maryland 21152-9390
(W/o Enclosures)

Southland Property Tax
421 West 3rd Street, Suite 920
Fort Worth, Texas 76102-3752
(W/o Enclosures)

Stancil & Co
P.O. Box 149
Richmond, Texas 77406-0004
(W/o Enclosures)

Start & Busch LLC
3720 Decker Drive
Baytown, Texas 77520-1644
(W/o Enclosures)

Tax Advisors Group
P.O. Box 671287
Dallas, Texas 75367-1287
(W/o Enclosures)

Tax Recourse LLC
2825 Wilcrest Drive, Suite 669
Houston, Texas 77042-6043
(W/o Enclosures)

Taylor Asset Consultants
2015 Seamist Court
Houston, Texas 77008-1154
(W/o Enclosures)

The Hidalgo Group Llc
11000 Richmond Avenue, Suite 350
Houston, Texas 77042-6702
(W/o Enclosures)

The Property Tax Group Inc
1 Riverway, Suite 1700
Houston, Texas 77056-1997
(W/o Enclosures)

The Randy C Fletcher Co
P.O. Box 441607
Houston, Texas 77244-1607
(W/o Enclosures)

True Partners Consulting
225 West Wacker Drive, Suite 1600
Chicago, Illinois 60606-2201
(W/o Enclosures)

Uhy Advisors
2929 Allen Parkway, Floor 20
Houston, Texas 77019-7101
(W/o Enclosures)

United Paramount Tax Group
4025 Woodland Park Boulevard, Suite 310
Arlington, Texas 76013-4398
(W/o Enclosures)

Valuebase
4301 Carter Creek Parkway, Suite 210
Bryan, Texas 77802-4486
(W/o Enclosures)

Vantage One Tax Solutions
6310 Lyndon B Johnson Freeway, Suite 208
Dallas. Texas 75240-6452
(W/o Enclosures)

Veal Dudley L
9502 Oxted Lane
Spring, Texas 77379-6624
(W/o Enclosures)

W B Lockhart & Company
P.O. Box 35375
Houston, Texas 77235-5375
(W/o Enclosures)

Wilson & Franco
11000 Richmond Avenue, Suite 350
Houston, Texas 77042-6702
(w/o enclosures)