



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2015

Ms. Hadassah Schloss
Open Records Coordinator
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2015-05802

Dear Ms. Schloss:

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# 557608.

The Texas General Land Office (the "GLO") received a request for a digital copy of the Original Texas Land Survey.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state, and provide documentation showing, you notified P2ES Holdings ("P2ES") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party

¹We note the GLO did not comply with the requirements of section 552.301 of the Government Code. See Gov't Code § 552.301(b), (e). Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. See *id.* §§ 552.007, .302. Thus, we will consider whether the submitted information may be withheld on that basis.

²P2ES states it is the successor-in-interest to Tobin International Ltd., the company whose information is at issue.

to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from an attorney for P2ES. We have considered the submitted arguments and reviewed the submitted information.

P2ES argues the information at issue 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.³ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret

³The 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).*

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).

Section 552.110(b) protects “[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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (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).

P2ES states the GLO currently holds a license from P2ES for access to a database titled “Original Texas Land Surveys,” a component of a copyright-protected suite of databases, including digital mapping data, owned by P2ES and known as “Superbase.” P2ES explains Superbase is a digitized comprehensive continuous high-resolution map organized into component databases, and the data contained in the component databases that comprise the digital mapping data is derived from multiple cross-referenced sources including original surveys, supplemental and private surveys, well location calls, and visible evidence from orthophotography. P2ES licenses the use of these databases to third parties for a fee, such that the database information is continuously used in the operation of its business. The information is also continuously used by third parties, such as companies in the energy industry and governmental entities, licensed by P2ES to use the information. Upon review, we find P2ES has established a *prima facie* case its digital mapping information constitutes trade secret information for purposes of section 552.110(a). Nevertheless, the GLO explains that the terms of the licensing agreement permit the GLO to release certain printouts of maps that are generated from the Original Texas Land Surveys database. We understand these printouts do not reveal all of the information in the database related to the mapped areas. Accordingly, to the extent P2ES does not permit the digital mapping data to be publicly disclosed under the terms of its licensing agreements or otherwise, we find the GLO must withhold the information at issue under section 552.110(a).⁴ However, to the extent P2ES permits the information at issue to be publicly released, such information does not comprise trade secrets, nor has the information been demonstrated to consist of commercial information, the public disclosure of which would cause substantial competitive harm to P2ES. Accordingly, to the extent P2ES permits the digital mapping data to be publicly disclosed under the terms of its licensing agreements or otherwise, we conclude such

⁴As our ruling is dispositive, we need not address P2ES’s remaining argument against disclosure of this information.

information is not excepted from public disclosure by section 552.110(a) or section 552.110(b) of the Government Code. *See* Open Records Decision No. 669 (2000).

P2ES also raises section 552.113 of the Government Code for its information. Section 552.113 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure under the Act] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (I) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase “information regarding the exploration or development of natural resources” means “information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation.” *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the “presence or absence of natural resources.” In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. *See* ORD 669. Thus, to the extent the digital mapping data is publicly disclosed under the terms of its licensing agreements or otherwise, the GLO may not withhold it under section 552.113 of the Government Code.

In summary, to the extent P2ES does not permit the digital mapping data to be publicly disclosed under the terms of its licensing agreements or otherwise, we find the GLO must withhold the information at issue under section 552.110(a) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 557608

Enc. Submitted documents

c: Requestor
(w/o enclosures)

P2ES Holdings
c/ o Ms. Scarlett Collings
Weil, Gotshal & Manges
700 Louisiana, Suite 1700
Houston, Texas 77002-2755
(w/o enclosures)