



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2015

Ms. Kristen Pauling Doyle  
General Counsel  
Cancer Prevention & Research Institute of Texas  
P.O. Box 12097  
Austin, Texas 78711

OR2015-15886

Dear Ms. Doyle:

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# 573896 (CPRIT 2015-04).

The Cancer Prevention & Research Institute of Texas (the "institute") received a request for all proposals, scoring sheets, and related correspondence associated with institute requisition number 542-15-001. You state you have released some information to the requestor. Although you take no position as to whether the remaining information is excepted under the Act, you state release of the remaining information may implicate the proprietary interests of CohnReznick, L.L.P. ("CohnReznick") and Weaver and Tidwell, L.L.P. ("Weaver"). Accordingly, you state, and provide documentation showing, you notified CohnReznick and Weaver of the request for information and of the companies' rights to submit arguments to this office as to why the submitted information should not be released. *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 to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from CohnReznick and Weaver. We have considered the submitted arguments and reviewed the submitted information.

CohnReznick and Weaver argue portions of the submitted information are not subject to 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. Gov't Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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) (citation omitted); *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>1</sup> *See* RESTATEMENT OF TORTS § 757 cmt. b. This office must

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<sup>1</sup>There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- and
- (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).

accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that 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.*; Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

CohnReznick and Weaver claim portions of the submitted information, including their client information, constitute trade secrets. Upon review, we find CohnReznick and Weaver have established *prima facie* cases that their client information constitutes trade secrets. Accordingly, to the extent the client information at issue is not publicly available on either company’s website, the institute must withhold CohnReznick’s and Weaver’s client information under section 552.110(a) of the Government Code.<sup>2</sup> However, we find CohnReznick and Weaver have failed to demonstrate any of the remaining information for which they assert section 552.110(a) meets the definition of a trade secret, nor has either company demonstrated the necessary factors to establish a trade secret claim for this information. Further, we note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is “simply information as to single or ephemeral events in the conduct of the business,” rather than “a process or device for continuous use in the operation of the business.” *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *Huffines*, 314 S.W.2d at 776; ORDs 319 at 3, 306 at 3. Accordingly, the institute may not withhold any of the remaining information at issue on the basis of section 552.110(a) of the Government Code.

CohnReznick and Weaver also contend portions of the remaining information are commercial or financial information, release of which would cause substantial competitive harm to each company. Upon review of Weaver’s arguments, we conclude Weaver has established the release of its pricing information would cause it substantial competitive injury. Accordingly, the institute must withhold Weaver’s pricing information, which we have marked, under section 552.110(b) of the Government Code. However, we find CohnReznick has failed to demonstrate the release of any of the remaining information

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

would cause the company substantial competitive harm. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Furthermore, we note the pricing information of a winning bidder, such as CohnReznick, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We, therefore, conclude the institute may not withhold any of the remaining information under section 552.110(b) of the Government Code.

In summary, to the extent the client information at issue is not publicly available on either company's website, the institute must withhold CohnReznick's and Weaver's client information under section 552.110(a) of the Government Code. The institute must withhold Weaver's pricing information, which we have marked, under section 552.110(b) of the Government Code. The institute 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,



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Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 573896

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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