



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Ms. Brandi M. Youngkin
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-17632

Dear Ms. Youngkin:

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# 576842 (Plano File No. 15-017).

The City of Plano (the "city") received a request for certain information submitted by Purvis Systems, Inc. ("Purvis") in response to a specified request for proposals. The city claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.110, and 552.136 of the Government Code.¹ The city also states release of the submitted information may implicate the proprietary interests of Purvis. Accordingly, the city states it notified Purvis 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. *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 Purvis. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

¹Although the city raises section 552.104 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the city has withdrawn its claim this section applies to the submitted information. *See Gov't Code* §§ 552.301, .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information other statutes make confidential, including the Texas Homeland Security Act (“HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 of the Government Code provides “[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.” *Id.* § 418.181. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision.

We understand the city to claim the fire stations at issue in the request are critical infrastructure for the purposes of section 418.181 of the Government Code. *See* Gov’t Code § 421.001 (defining “critical infrastructure” to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Upon review, we find the floor plans you indicated in Exhibit B reveal the technical details of particular vulnerabilities of a fire department to an act of terrorism. Therefore, the city must withhold the floor plans you indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.²

The city asserts the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (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. *Id.* § 552.110(a)-(b). However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. Therefore, we do not address the city’s argument under section 552.110.

Purvis states some of its information is excepted from disclosure under section 552.110 of the Government Code. As noted above, 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. 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

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

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 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* 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 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,

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).

not conclusory or generalized allegations, 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, release of requested information would cause that party substantial competitive harm).

Purvis argues some of its information constitutes trade secrets. Upon review, we find Purvis has failed to establish a *prima facie* case any of its information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for the information at issue. *See* ORD 402. Therefore, none of Purvis's information may be withheld under section 552.110(a).

Purvis contends some of its information is commercial or financial information, release of which would cause substantial competitive harm to Purvis. Upon review, we conclude Purvis has established the release of its customer information would cause the company substantial competitive injury. Accordingly, to the extent Purvis's customer information within the submitted information is not publicly available on Purvis's website, the city must withhold the customer information at issue under section 552.110(b). To the extent Purvis's customer information is publicly available on the company's website, the city may not withhold such information under section 552.110(b). Purvis also raises section 552.110(b) for some of its remaining information, including its pricing information. We note the pricing information of winning bidders of a government contract, such as Purvis, is generally not excepted under section 552.110(b). Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see* ORD 319 at 3 (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to section 552.110). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* ORD 514. Upon review, we find Purvis has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of Purvis's remaining information would cause the company substantial competitive harm. *See* Open Records Decision Nos. 319 at 3 (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). We therefore conclude the city may not withhold the remaining information under section 552.110(b).

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon

review, we find the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. However, we find none of the remaining information is subject to section 552.136 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

We note some of the remaining information 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.

In summary, the city must withhold the floor plans you have indicated in Exhibit B under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. To the extent Purvis's customer information within the submitted information is not publicly available on Purvis's website, the city must withhold the customer information at issue under section 552.110(b) of the Government Code. The city must withhold the insurance numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information; however, any information subject to copyright may be released only 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader". The signature is written in black ink and is positioned above the typed name and title.

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 576842

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stephen P. Massed
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(w/o enclosures)