



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 27, 2015

Ms. Alicia Richardson
City Secretary
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2015-17935

Dear Ms. Richardson:

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# 577821 (City Ref. No. W000676-060515).

The City of North Richland Hills (the "city") received a request for "pricing specifications from the top three responding bidders on RPF #14-003[.]" You claim some of the submitted information is excepted from disclosure under sections 552.136 and 552.137 of the Government Code. Although you take no position as to whether the remaining submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Spillman Technologies ("Spillman"), SunGard Public Sector ("SunGard"), and Tiburon, Inc. ("Tiburon").¹ Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 received arguments from SunGard. We have reviewed the submitted arguments and the submitted information.

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.136 and 552.137 of the Government Code and third party interests can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Spillman or Tiburon explaining why the submitted information should not be released. Therefore, we have no basis to conclude Spillman and Tiburon have protected proprietary interests in the submitted information. *See id.* § 552.110; 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 city may not withhold the submitted information on the basis of any proprietary interest Spillman or Tiburon may have in the information.

We note some of the information SunGard seeks to withhold is not responsive to the instant request because it does not pertain to pricing specifications.² This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

SunGard asserts portions of its information are 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.

²SunGard seeks to withhold the names of customers and staff, which are not pricing specifications.

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 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). We note pricing information pertaining to a particular 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." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

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* ORD 661 (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).

Upon review, we find SunGard has demonstrated the pricing information it seeks to withhold is commercial or financial information, the release of which would cause it substantial

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).

competitive harm. Therefore, the city must withhold SunGard's pricing information, which we have marked, under section 552.110(b) of the Government Code.⁴

Section 552.136 of the Government Code provides, "Notwithstanding 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). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Although you claim some of the remaining information is excepted from disclosure under section 552.136, upon review, we find the information does not contain any access device numbers or other information subject to section 552.136. Thus, we find the city has failed to demonstrate the applicability of section 552.136 to any of the remaining information, and the city may not withhold any of the remaining information on this basis.

The city states it will redact e-mail addresses contained in the submitted records under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).⁵ We note subsection 552.137(c) provides subsection 552.137(a) does not apply to an e-mail address provided to a governmental body by a vendor who seeks a contractual relationship with the governmental body or to an email address contained in a response to a request for bids or proposals. Gov't Code § 552.137(c)(2)-(3). Thus, the submitted e-mail addresses are not excepted from public disclosure under section 552.137 of the Government Code and the city may not withhold the e-mail addresses 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.

⁴As our ruling is dispositive, we do not address SunGard's other arguments to withhold this information.

⁵Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

In summary, the city must withhold SunGard's pricing information, which we have marked, under section 552.110(b) of the Government Code. The city must release the remaining information; however, any information subject to copyright may only be released 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 577821

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Karen Colvin
Manager, Sales Support
SunGard Public Sector
1000 Business Center Drive
Lake Mary, Florida 32746
(w/o enclosures)

Mr. Joe Lunt
Vice President
Spillman Technologies
4625 Lake Park Boulevard
Salt Lake City, Utah 84120
(w/o enclosures)

Mr. Jamie Oliver
Chief Financial Officer
Tiburon, Inc.
3000 Executive Parkway, Suite 500
San Ramon, California 94583
(w/o enclosures)