



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2015

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-19964

Dear Ms. Freeland:

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# 580676 (DPS PIR# 15-3246).

The Texas Department of Public Safety (the "department") received a request for all applications submitted for a specified request for applications and the department's scoring methodology. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you state, and provide documentation showing, you notified Explore Information Services, L.L.C. ("Explore"), Insurance Information Exchange ("iiX"), LexisNexis Risk Solutions, Inc. ("LexisNexis"), and SambaSafety of the request and of their right to submit arguments to this office explaining 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); *see also* 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 arguments submitted by Explore, iiX, and LexisNexis. Accordingly, we have considered their arguments and reviewed the submitted information.

Initially, we note you have only submitted the requested applications. You have not submitted any information responsive to the portion of the request seeking the department's scoring methodology. To the extent information responsive to the remaining portion of the request existed and was maintained by the department on the date it received the request, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if a governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible under circumstances).

Next, we note iiX seeks to withhold information the department has not submitted to this office for review. Because the information iiX seeks to withhold was not submitted by the governmental body, this ruling does not address that information and is limited to the responsive information submitted by the department. *See* Gov't Code § 552.301(e)(1)(D).

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from SambaSafety. Thus, SambaSafety has not demonstrated that it has a protected proprietary interest 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 department may not withhold the submitted information on the basis of any proprietary interest SambaSafety may have in the information.

Explore, iiX, and LexisNexis claim their 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* Gov't Code § 552.110. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a).

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 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* 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* ORD 661 at 5.

Explorer and iiX claim their customer information constitutes trade secrets. Upon review, we find Explorer and iiX have established a *prima facie* case their customer information constitutes trade secrets. Accordingly, to the extent Explorer and iiX’s customer information within the submitted information is not publicly available on their websites, the department must withhold the customer information at issue under section 552.110(a). To the extent their customer information is publicly available on the companies’ websites, the department

¹The 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).

may not withhold such information under section 552.110(a). However, we find LexisNexis has failed to demonstrate its information meets the definition of a trade secret. Additionally, we find Explorer and iiX have failed to demonstrate any of their remaining information meets the definition of a trade secret. Furthermore, none of these parties demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the department may not withhold Explorer's or iiX's remaining information, or any of LexisNexis's information, under section 552.110(a).

Explorer argues its customer information is also excepted from disclosure under section 552.110(b) of the Government Code. To the extent Explorer's customer information is publicly available on the company's website and not excepted from disclosure under section 552.110(a), the department may not withhold such information under section 552.110(b). We find LexisNexis has failed to demonstrate its submitted information consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b). We further find Explorer and iiX have failed to demonstrate the release of their remaining information would cause the companies 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), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the department may not withhold any of LexisNexis's information or the remaining information of Explorer or iiX under section 552.110(b) of the Government Code.

In summary, to the extent Explorer's and iiX's customer information within the submitted information is not publicly available on their websites, the department must withhold the customer information at issue 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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 580676

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Christenson
Explore Information Services
2750 Blue Water Road, Suite 200
Eagan, Minnesota 55121
(w/o enclosures)

Mr. Robby Hobbs
iiX
1716 Briarcrest Drive, Suite 200
Bryan, Texas 77802
(w/o enclosures)

Mr. Jonathan Petcu
LexisNexis
1000 Alderman Drive
Alpharetta, Georgia 30005
(w/o enclosures)

Mr. Chris McKay
SambaSafety
8814 Horizon Boulevard NE, Suite 100
Albuquerque, New Mexico 87113
(w/o enclosures)