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ATTORNEY GENERAL OF TEXAS

October 8, 2015

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
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OR2015-21184

Dear Mr. Ramirez:

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# 582407.

The Lower Colorado River Authority (the "authority") received a request for the evaluation documents and proposals for a specified request for proposals, excluding the proposal from the requestor's company. Although we understand the authority takes no position with respect to whether the information at issue is excepted from disclosure, you state its release may implicate the interests of third parties.¹ Accordingly, you state, and provide documentation demonstrating, the authority notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.² See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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

¹Although you initially raised sections 552.104 and 552.111 of the Government Code, you provide no arguments to support these exceptions. Therefore, we presume you no longer assert these exceptions. See Gov't Code §§ 552.301, .302.

²The third parties notified pursuant to section 552.305 are the following: BBVA Compass; Capital One; J.P. Morgan Chase Bank, N.A.; U.S. Bank National Association ("U.S. Bank"); and Wells Fargo.

exception in certain circumstances). We have received comments from U.S. Bank. We have reviewed the responsive information and the arguments submitted by U.S. Bank.

Initially, you inform us by letter dated August 11, 2015, the authority withdraws its request for a ruling regarding the requested evaluation documents. You explain the requestor modified her request to exclude the evaluation documents. Thus, this information is no longer responsive to the request. Therefore, this ruling does not address the non-responsive evaluation documents.

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 the other third parties explaining why the responsive information should not be released. Therefore, we have no basis to conclude the other third parties have protected proprietary interests in the responsive 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case information is trade secret), 542 at 3. Accordingly, the authority may not withhold the responsive information on the basis of any proprietary interests the other third parties may have in the information. As no exceptions to disclosure have been raised, the responsive information pertaining to the other third parties must be released.

U.S. Bank claims portions of its information are excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

U.S. Bank contends its employees' names, telephone numbers, e-mail addresses, and office locations are subject to common-law privacy. We note this office has found that names, telephone numbers, and addresses are generally not excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987). Upon review, we find U.S. Bank has failed to demonstrate the information at issue is highly intimate or embarrassing and not of legitimate public concern. As a result, the authority may not

withhold the responsive information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.110 of Government Code protects (1) trade secrets 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. 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). 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 763 (Tex.), *cert. denied*, 358 U.S. 898 (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 has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested

³The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

- (1) the extent to which the information is known outside of [the company];
- (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 [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).*

information, we must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). 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).

U.S. Bank claims its client information constitutes trade secret information. Upon review, we find U.S. Bank has established a *prima facie* case that its client information constitutes trade secret information. Accordingly, to the extent U.S. Bank’s client information is not publicly available on U.S. Bank’s website, the authority must withhold the client information at issue under section 552.110(a). To the extent U.S. Bank’s responsive client information is publicly available on the company’s website, the authority may not withhold such information under section 552.110(a).

U.S. Bank also contends portions of the remaining information, including its pricing information, are commercial or financial information, release of which would cause substantial competitive harm to U.S. Bank. Upon review of U.S. Bank’s arguments under section 552.110(b), we conclude U.S. Bank has established the release of some of its responsive information would cause the company substantial competitive injury. Accordingly, the authority must withhold the information we have marked under section 552.110(b). However, we find U.S. Bank has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining information would cause the company substantial competitive harm. Accordingly, the authority may not withhold the remaining information at issue under section 552.110(b).

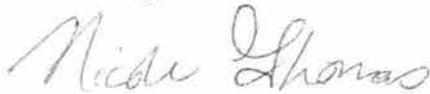
We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection 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, to the extent U.S. Bank's responsive client information is not publicly available on the company's website, the authority must withhold such information under section 552.110(a) of the Government Code. The authority must withhold the information we have marked under section 552.110(b) of the Government Code. The authority must release the remaining responsive information; however, any information protected by 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,



Nicole Thomas
Assistant Attorney General
Open Records Division

NT/dls

Ref: ID# 582407

Enc. Submitted documents

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