



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 14, 2015

Ms. Shawn Venables  
Senior Contracts Administrator  
Office of the Harris County Purchasing Agent  
1001 Preston, Suite 670  
Houston, Texas 77002

OR2015-21606

Dear Ms. Venables:

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# 583130 (C.A. File 14GEN0570).

The Office of the Harris County Purchasing Agent (the "purchasing agent's office") received two requests from different requestors. The first request seeks proposals submitted by companies other than the requestor's company for a specified request for proposals, the scoring documents for the specified request for proposals, and the BAFO responses from companies other than the requestor's company. The second request seeks all submitted proposals for the same request for proposals. Although you take no position with respect to whether the submitted information is excepted from disclosure, you state its release may implicate the interests of a third party. Accordingly, you state, and provide documentation showing, you notified Advanced Technology Information Management Systems, Inc. ("ATIMS") of the requests for information and of its right to submit arguments stating why its 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); 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). You have submitted objections from ATIMS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, in regard to the first request, you have only submitted the proposal submitted by ATIMS. Further, with respect to both requests, you have submitted information pertaining only to ATIMS. However, you have not submitted the scoring sheets or the BAFO responses for the first request, or any information pertaining to other third parties. To the extent information responsive to the remaining portions of the requests existed and was maintained by the purchasing agent's office on the dates it received the requests, we assume the purchasing agent's office has released it. If the purchasing agent's office 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 have received comments from counsel for Global Tel\*Link ("GTL"), seeking to withhold some of its information. However, we note the purchasing agent's office did not submit any information pertaining to GTL for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the purchasing agent's office. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

ATIMS raises section 552.110 of the Government Code for a portion of its information. 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 id.* § 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 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.<sup>1</sup> 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).

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, 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 5-6 (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).

ATIMS argues a portion of its submitted information consists of commercial information the release of which would cause ATIMS substantial competitive harm. Upon review, we find ATIMS has established the release of its software product detail information, which we have marked, would cause the company substantial competitive injury. Accordingly, the purchasing agent’s office must withhold the information we have marked under section 552.110(b).<sup>2</sup> However, we find ATIMS has failed to demonstrate the release of its remaining information at issue would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or

---

<sup>1</sup>The 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* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

<sup>2</sup>As our ruling is dispositive, we need not address ATIMS’s remaining argument against disclosure of this information.

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). Accordingly, the purchasing agent's office may not withhold any of ATIM's remaining information at issue under section 552.110(b) of the Government Code.

ATIMS also contends some of its remaining information constitutes trade secrets under section 552.110(a) of the Government Code. Upon review, ATIMS has failed to establish a *prima facie* case the information at issue meets the definition of a trade secret. Moreover, we find ATIMS has not demonstrated the necessary factors to establish a trade secret claim for the information at issue. *See* ORD 402. Therefore, none of the remaining information at issue may be withheld under section 552.110(a) of the Government Code.

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 states, in part, "Notwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the purchasing agent's office must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

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 purchasing agent's office must withhold the information we have marked under section 552.110(b) of the Government Code. The purchasing agent's office must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released; however, any information subject to copyright may only be released in accordance with copyright law.

---

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 583130

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Casey T. Wallace  
For Global Tel\*Link  
Johnson, Trent, West & Taylor  
919 Milam, Suite 1700  
Houston, Texas 77002  
(w/o enclosures)

Nancy H. Lazenby  
ATIMS, Inc.  
9638 Topanga Canyon Place, Suite B  
Chatsworth, California 91311  
(w/o enclosures)