



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2015

Mr. Tillman S. Roots
Assistant District Attorney - Civil
Criminal District Attorney's Office
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130

OR2015-22051

Dear Mr. Roots:

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# 583884 (File Nos. 15OR-070, 15OR-079, and 15OR-085).

Comal County (the "county") received three requests for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110. You state release of this information may implicate the proprietary interest of Granicus, Harris Recording Systems ("Harris"), Pioneer Technology Group ("Pioneer"), and Tyler Technologies ("Tyler"). Accordingly, you state you notified these parties of the requests for information and of their rights 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 have received comments from Pioneer and Tyler. 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* (interested party may submit comments stating why information should or should not be released).

We note 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) of the Government Code to submit

its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Granicus or Harris explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties 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 county may not withhold any portion submitted information related to those parties on the basis of any proprietary interest they may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another [competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. The county generally states release of the requested information “may give an advantage to a competitor of the four vendors that submitted proposals.” Upon review, we find the county has not demonstrated the release of the information will give an advantage to a competitor. Thus, no portion of the submitted information may be withheld under section 552.104 based on the county’s argument. Pioneer states it has competitors. In addition, Pioneer states the release of the financial statements and the installation workbook would cause it harm if acquired by its competition. After review of the information at issue and consideration of the arguments, we find Pioneer has established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we marked under section 552.104(a).

The county and Tyler assert the submitted information is excepted from disclosure under section 552.110 of the Government Code. 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 county’s argument under section 552.110. 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.

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* 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

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).

§ 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).

Tyler argues portions of its submitted information consist of commercial information, the release of which would cause it substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Tyler has made the specific factual or evidentiary showing required by section 552.110(b) that release of its pricing information would cause the company substantial competitive harm. *See* ORD 661. Therefore, this information, which we have marked, must be withheld under section 552.110(b). However, we find Tyler has not demonstrated substantial competitive injury would result from the release of any of its remaining information under section 552.110(b). *See* Open Records Decision Nos. 175 at 4 (1977) (résumés cannot be said to fall within any exception to the Act), 661. Accordingly, none of Tyler's remaining information may be withheld under section 552.110(b) of the Government Code.

Tyler also argues portions of the remaining information constitute trade secrets. Upon review, we find Tyler has not established a *prima facie* case that its remaining information at issue meets the definition of a trade secret nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 402. Therefore, none of the remaining information at issue may be withheld under section 552.110(a).

Section 552.136(b) 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.”² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

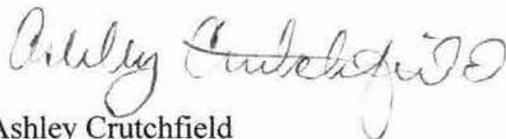
In summary, the county may withhold the information we marked under section 552.104(a). The county must withhold the information we marked under section 552.110(b). The county must withhold the insurance policy numbers we marked under section 552.136. The county must release the remaining information.

²The 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, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 583884

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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