



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 29, 2015

Ms. Jeanne C. Collins
General Counsel
El Paso Independent School District
P.O. Box 20100
El Paso, Texas 79998-0100

OR2015-27204

Dear Ms. Collins:

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# 592252.

The El Paso Independent School District (the "district") received a request for an awarded contract and winning proposal, specified invoices, agency evaluation scoring sheets, and unsuccessful proposals pertaining to a specified request for proposals. You state you are releasing some information. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of Public Consulting Group ("PCG") and ESPED. Accordingly, you state, and provide documentation showing, you notified PCG and ESPED 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 have received arguments from PCG. We have considered the exceptions claimed and reviewed the submitted information.

We note some of the information at issue was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-20520 (2015). In that ruling, we determined the district must release ESPED's information under section 552.305 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the district may continue to rely on Open Records Letter No. 2015-20520 as a previous determination and release the information at issue in accordance with that ruling. *See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type*

of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider the submitted arguments for the submitted information not subject to the previous ruling.

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

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).

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).

PCG argues portions of its information constitute a trade secret. Upon review, we find PCG has established a *prima facie* case that some of its information meets the definition of a trade secret and it has demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 402. Therefore, the district must withhold the information we marked under section 552.110(a) of the Government Code. However, upon review, we find PCG has not shown any of its remaining information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim for the remaining information. *See* Gov’t Code § 552.110(a). Accordingly, the district may not withhold any of the remaining information under section 552.110(a) of the Government Code.

PCG contends some of its information is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find PCG has not demonstrated any of its information constitutes commercial or financial information, the release of which would cause substantial competitive injury. *See id.* § 552.110(b). Therefore, the district may not withhold any of PCG’s remaining information on this basis.

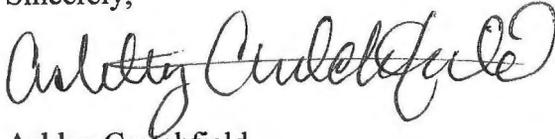
In summary, the district may rely on our previous determination of Open Records Letter No. 2015-20520 and release ESPED’s information. The district must withhold the portions of PCG’s information we marked under section 552.110(a) of the Government Code. The district must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Ashley Crutchfield". The signature is written in a cursive style with a large, looped initial "A".

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 592252

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Tim Gillespie
Public Consulting Group
816 Congress Avenue, Suite 1110
Austin, Texas 78701
(w/o enclosures)

Mr. George Dhionis
ESPED
6 Riverside Drive
Andover, Massachusetts 01810
(w/o enclosures)