



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2016

Ms. Elizabeth Conry Davidson
Counsel for Bexar Appraisal District
926 Chulie Drive
San Antonio, Texas 78216

OR2016-04315

Dear Ms. Davidson:

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# 599129 (WO# 4596).

The Bexar Appraisal District (the "district"), which you represent, received a request for information concerning Bid No. JANT2016. 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 notified ABM, McLemore Building Maintenance ("McLemore"), and Unified Service Associates ("USA") 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 from ABM, McLemore, and USA. We have considered these arguments and reviewed the submitted information.

ABM and USA each raise section 552.104 of the Government Code, which 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 bidder's [or competitor's information] would be an advantage, not whether it would

be a decisive advantage.” *Id.* at 841. Both ABM and USA state they have competitors. ABM and USA also state release of the information at issue would negatively affect their ability to compete for business in the future. After review of the information at issue and consideration of the arguments, we find ABM and USA have established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the district may withhold the submitted information related to ABM and the information we marked in USA’s proposal under section 552.104(a) of the Government Code.¹

We understand McLemore asserts section 552.110(a) of the Government Code for its customer information. 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.² This office must accept a claim that information subject to

¹As our ruling is dispositive, we do not address any other arguments against the disclosure of this information.

²The 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;

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 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). Upon review, we find McLemore has made a *prima facie* case that the customer information it has indicated constitutes trade secret information for purposes of section 552.110(a). Accordingly, to the extent the customer information we marked is not publicly available on McLemore's website, the district must withhold it under section 552.110(a) of the Government Code.

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."³ 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 district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, the district may withhold the submitted information related to ABM and the information we marked in USA's proposal under section 552.104(a) of the Government Code. To the extent the customer information we marked is not publicly available on McLemore's website, the district must withhold it under section 552.110(a) of the Government Code. The district must withhold the insurance policy numbers we marked under section 552.136 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/>

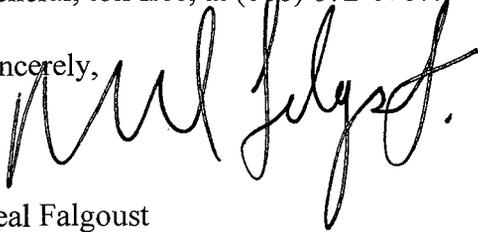
(6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

³The 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).

[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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 599129

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Curtis McLemore
Chief Executive Officer
McLemore Building Maintenance
110 Fargo
Houston, Texas 77006
(w/o enclosures)

Ms. Yesica Antu-Sanchez
Records Management Officer
Unified Service Associates
414 North General McMullen, Suite 111
San Antonio, Texas 78237
(w/o enclosures)

Ms. Lenore L. Espinosa Casey
Assistant General Counsel
ABM Facility Services
152 Technology Drive
Irvine, California 92618
(w/o enclosures)