



January 21, 2015

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2015-01165

Dear Mr. Meitler:

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# 548917 (PIR Nos. 23062, 23067, 23123).

The Texas Education Agency (the "agency") received three requests from different requestors for information pertaining to a specified Request for Quotes ("RFQ"), including bid proposals, pricing information, and scoring information for all bidders. You state you have released some information to the requestors. You state you have redacted insurance policy numbers under section 552.136(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> Although you do not take any position as to whether the submitted information is excepted from public disclosure under the Act, you state the release of the submitted information may implicate the proprietary interests of numerous third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the requests for information and of their rights to submit arguments to this office as to why the submitted information should not be

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<sup>1</sup>Section 552.136(c) of the Government Code authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of requesting a decision from this office. *See* Gov't Code § 552.136(b), (c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *Id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Thus, we need not address MasterWord's argument against disclosure of this information.

released. See Gov't Code § 552.305(d) (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 exceptions to disclosure under the Act in certain circumstances). We have received comments from Global Speak Translations ("Global"); Interpreters Unlimited, Inc. ("Unlimited"); Latitude Prime ("Latitude"); Translation Source; Universe Technical Translation, Inc. ("Universe"); and MasterWord Services, Inc. ("MasterWord"). We have reviewed the submitted information and the submitted arguments.

Initially, 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) 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 only received arguments from the third parties listed above. Therefore, we have no basis to conclude any of the remaining third 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 agency may not withhold any of the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Translation Source, Universe, and MasterWord 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 § 552.104(a). However, we note section 552.104 protects the interests of governmental bodies, not third parties. See Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Accordingly, we will not consider these third parties' claims under this section. Further, the agency does not raise section 552.104 as an exception to disclosure. Therefore, the agency may not withhold any of the submitted information under section 552.104 of the Government Code.

Global, Unlimited, Latitude, Translation Source, Universe, and MasterWord contend portions of their information are excepted from disclosure under section 552.110 of the Government Code, which 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. 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. See *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); see also ORD 552. Section 757 provides that a trade secret is

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 Huffines*, 314 S.W.2d at 776. 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>2</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim 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. *See* 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 the release of the information at issue. *Id.*; *see also* ORD 661.

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

Global, Unlimited, Latitude, Translation Source, Universe, and MasterWord assert portions of their information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we find Global, Unlimited, Latitude, and MasterWord have each established a *prima facie* case their customer information constitutes trade secret information. Accordingly, to the extent this information is not publicly available on these third parties' web sites, the agency must withhold these third parties' customer information under section 552.110(a). We further find Global and MasterWord have each established a *prima facie* case portions of their remaining information, which we have marked, constitute trade secret information. Thus, the agency must also withhold the portions of the remaining information we have marked under section 552.110(a) of the Government Code. However, we find the third parties have failed to establish a *prima facie* case any portion of their remaining information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for their remaining information. See ORD 402, 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). We note pricing information pertaining to a particular proposal or 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." See RESTATEMENT OF TORTS § 757 cmt. b; *Huffines*, 314 S.W.2d at 776; ORDs 319 at 3, 306 at 3. Therefore, the agency may not withhold any of the third parties' remaining information under section 552.110(a) of the Government Code.

Global, Unlimited, Latitude, Translation Source, and MasterWord also claim portions of their information constitute commercial or financial information, the disclosure of which would cause substantial competitive harm. Upon review, we find Latitude, Translation Source, and MasterWord have each established their pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause these companies substantial competitive injury. Accordingly, the agency must withhold these third parties' pricing information, which we have marked, under section 552.110(b) of the Government Code. Further, upon review, we find Translation Source and MasterWord have each demonstrated portions of their remaining information, which we have marked, constitute commercial or financial information, the release of which would cause the companies substantial competitive injury. Thus, the agency must also withhold the portions of the remaining information we have marked under section 552.110(b) of the Government Code. However, we find the third parties have not demonstrated substantial competitive injury would result from the release of any of their remaining information. See Open Records Decisions Nos. 661, 319 at 3, 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), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Therefore, the agency may not withhold any of the third parties' remaining information under section 552.110(b) of the Government Code.

Global also argues portions of its information fit the definition of a trade secret found in section 134A.002(6) of the Civil Practice and Remedies Code of the Texas Uniform Trade Secrets Act (the "TUTSA") as added by the Eighty-third Texas Legislature. 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 of the Government Code encompasses information made confidential by other statutes. Section 134A.002(6) provides:

(6) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that:

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Civ. Prac. & Rem. Code § 134A.002(6). We note the legislative history of TUTSA indicates it was enacted to provide a framework for litigating trade secret issues and provide injunctive relief or damages in uniformity with other states. Senate Research Center, Bill Analysis, S.B. 953, 83rd Leg., R.S. (2013) (enrolled version). The definition of trade secret found in section 134A.002(6) expressly applies to chapter 134A only, not the Act, and does not expressly make any information confidential. *See* Civ. Prac. & Rem. Code § 134A.002(6); *see also id.* § 134A.007(d) (TUTSA does not affect disclosure of public information by governmental body under the Act); Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the agency may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 134A.002(6) of the Texas Civil Practice and Remedies Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by

the Texas Supreme Court in *Industrial Foundation*. Accordingly, the agency must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the agency must withhold the insurance policy numbers and bank account 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 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 the customer information Global, Unlimited, Latitude, and MasterWord seek to withhold is not publicly available on their web sites, the agency must withhold these third parties’ customer information under section 552.110(a) of the Government Code. Further, the agency must withhold the portions of Global’s and MasterWord’s remaining information we have marked under section 552.110(a) of the Government Code. The agency must also withhold Latitude’s, Translation Source’s, and MasterWord’s pricing information, which we have marked, under section 552.110(b) of the Government Code. Further, the agency must withhold the portions of Translation Source’s and MasterWord’s remaining information we have marked under section 552.110(b) of the Government Code. The agency must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the insurance policy numbers and bank account numbers we have marked under section 552.136 of the Government Code. The agency must release the remaining information; however, any information that is subject to copyright may be released only 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](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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 548917

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

Mr. Alexandre Monot  
All Global Solutions International, Inc.  
P.O. Box 3634  
Lantana, Florida 33465  
(w/o enclosures)

Ms. Sandra M. Chada  
American International Translators  
4155 Travis County Circle  
Austin, Texas 78735  
(w/o enclosures)

Mr. Raymond Abbas  
ATI Languageline, L.L.C.  
6100 Edinger Avenue, Unit 634  
Huntington Beach, California 92647  
(w/o enclosures)

Ms. Jenna Houston  
Geneva Worldwide, Inc.  
256 West 38th Street, 10th Floor  
New York, New York 10018  
(w/o enclosures)

Global Speak Translations  
c/o Ms. Viane Lopez Braun  
Buck Keenan, L.L.P.  
700 Louisiana, Suite 5100  
Houston, Texas 77002  
(w/o enclosures)

Mr. Shamus Sayed  
V.P. of Sales & Marketing  
Interpreters Unlimited, Inc.  
11199 Sorrento Valley Road, Suite 203  
San Diego, California 92121  
(w/o enclosures)

Ms. Kimberly Silverman  
LanguageUSA, Inc.  
Building 3, Suite 400  
1250 South Capital of Texas Highway  
Austin, Texas 78746  
(w/o enclosures)

Mr. Michael Launer  
RussTech Language Services, Inc.  
1338 Vickers Road  
Tallahassee, Florida 32303-3041  
(w/o enclosures)

Ms. Gabriela Guerrero  
TRI-LIN Integrated Services, Inc.  
15310 Huebner Road  
San Antonio, Texas 78248  
(w/o enclosures)

Mr. Wyatt Kanyer  
Teneo Linguistics Company, L.L.C.  
4700 Bryant Irvin Court, Suite 301  
Fort Worth, Texas 76107-7645  
(w/o enclosures)

Masterword Services, Inc.  
c/o Mr. John C. Allen  
John C. Allen, P.C.  
909 Fannin, Suite 1600  
Houston, Texas 77010  
(w/o enclosures)

Ms. Katrina Rivers Thibodeaux  
Stuart B. Consultants, Inc.  
d/b/a Birnbaum Interpreting Services  
8555 16th Street, Suite 300  
Silver Spring, Maryland 20910  
(w/o enclosures)

Mr. Russell Banton  
TechTrans International  
2200 Space Park Drive, Suite 410  
Houston, Texas 77058  
(w/o enclosures)

Ms. Rowbin Hickman  
Translation Source  
2813 W T C Jester Boulevard  
Houston, Texas 77018  
(w/o enclosures)