



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 20, 2015

Ms. Sarah W. Langlois  
Counsel for the Harris County Department of Education  
Rogers, Morris & Grover, LLP  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2015-07559

Dear Ms. Langlois:

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# 560658.

The Harris County Department of Education (the "department"), which you represent, received a request for all bids submitted for a specified request for proposals. We understand the department will redact insurance policy numbers pursuant to section 552.136(c) of the Government Code.<sup>1</sup> Although you take no 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 Bayus Security Services, Inc.; Executive Threat Solutions, LLC; Metropol Security Services, LLC; Point Blank Security; and Vets Securing America ("VSA"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be 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

---

<sup>1</sup>This office has determined an insurance policy number is an access device for purposes of section 552.136(c) of the Government Code, which 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).

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 VSA. 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 comments from VSA explaining why its information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have a protected proprietary interest 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 department may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

VSA claims its information is 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 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 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. 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 release of the information at issue. *Id.*; see also ORD 661 at 5-6.

VSA claims its information constitutes trade secrets. Upon review, we find VSA has established a *prima facie* case its customer information constitutes trade secret information. Thus, to the extent this information is not publicly available on VSA’s web site, the department must withhold VSA’s customer information under section 552.110(a). However, we find VSA has failed to establish a *prima facie* case any of its remaining information meets the definition of a trade secret, nor has VSA demonstrated the necessary factors to establish a trade secret claim for its 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 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;

---

<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).

*Huffines*, 314 S.W.2d at 776; ORDs 319 at 3, 306 at 3. Therefore, none of VSA's remaining information may be withheld under section 552.110(a) of the Government Code.

VSA also claims its information constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Upon review, we find VSA has demonstrated a portion of its remaining information, which we have marked, constitutes commercial or financial information, the release of which would cause VSA substantial competitive injury. Thus, the department must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find VSA has not demonstrated substantial competitive injury would result from the release of any of its 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, none of VSA's remaining information may be withheld under section 552.110(b) of the Government Code.

We understand the department will redact the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.<sup>3</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public disclosure. *See* Gov't Code § 552.130. We note the remaining information includes additional motor vehicle record information subject to section 552.130, which we have marked. Thus, the department must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 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 VSA's customer information is not publicly available on VSA's web site, the department must withhold this information under section 552.110(a) of the

---

<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.130(a), (c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Government Code. The department must withhold the portion of VSA's remaining information we have marked under section 552.110(b) of the Government Code. The department must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The remaining information must be released; however, the department may only release the information subject to copyright 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# 560658

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Bayus Security Services, Inc.  
7400 Harwin Drive, Suite 224  
Houston, Texas 77036  
(w/o enclosures)

Executive Threat Solutions, LLC  
P.O. Box 185  
Houston, Texas 77001-0185  
(w/o enclosures)

Metropol Security Services, LLC  
11811 North Freeway, Suite 500  
Houston, Texas 77060  
(w/o enclosures)

Point Blank Security  
1701 North Greenville Avenue  
Richardson, Texas 75081  
(w/o enclosures)

Mr. Craig Weissman  
Chief Operating Officer  
Vets Securing America  
10100 Reunion Place, Suite 750  
San Antonio, Texas 78216  
(w/o enclosures)