



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Jeff Law
Executive Director and Chief Appraiser
Tarrant Appraisal District
2500 Handley-Ederville Road
Fort Worth, Texas 76118-6909

OR2015-17644

Dear Mr. Law:

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# 576780.

The Tarrant Appraisal District (the "district") received a request for cost summaries of specified restaurants. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of Thomson Reuters Inc. ("Thomson Reuters") and Marshall & Swift/Boeckh, L.L.C. ("MSB") might be implicated. Accordingly, you notified Thomson Reuters and MSB 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 Thomson Reuters and MSB. We have considered the submitted arguments and reviewed the submitted information.

MSB raises section 552.104 of the Government Code. 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*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 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 *9. MSB quotes section 552.104, but does not make any arguments explaining how section 552.104 applies to its submitted information. After review, we find MSB has failed to demonstrate the release of its information would give advantage to a competitor or bidder. Accordingly, the district may not withhold any of the submitted information under section 552.104 of the Government Code.

Thomson Reuters and MSB raise section 552.110 of the Government Code for the submitted information. 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), *cert. denied*, 358 U.S. 898 (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

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).*

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* Open Records Decision No. 552 at 5 (1990). 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).

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.*: Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Thomson Reuters and MSB argue the submitted information constitutes trade secrets. Upon review, we find Thomson Reuters and MSB have failed to demonstrate the information for which they assert section 552.110(a) meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the district may not withhold the information at issue on the basis of section 552.110(a) of the Government Code.

Thomson Reuters and MSB also contend the submitted information is commercial or financial information, release of which would cause the companies substantial harm. However, we find Thomson Reuters nor MSB have made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their information would cause the companies substantial competitive harm. *See* ORD 319 at 3 (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude the district may not withhold the submitted information under section 552.110(b) of the Government Code.

Section 552.149 of the Government Code, in relevant part, provides:

(a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of [the Act].

(b) Notwithstanding Subsection (a), the property owner or the owner’s agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461 (a)(2), Tax Code, and a copy of each item of information that the chief appraiser

took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest[.]

Gov't Code § 552.149(a)-(b). Subsections 552.149(a) and (h) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Tarrant County has a population of 50,000 or more. MSB indicates the information at issue includes information obtained by the district from private entities. Therefore, we find to the extent the submitted information relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, the district must withhold the information under section 552.149(a) of the Government Code. Conversely, to the extent the information at issue does not relate to real property sales prices, descriptions, characteristics, and other related information or was not provided to the district by private entities, it is not confidential under section 552.149(a) and it may not be withheld on that basis.

In summary, to the extent the submitted information relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, the district must withhold the information under section 552.149(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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 576780

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Yianni D. Pantis
For Marshall & Swift/Boeckh
CoreLogic
40 Pacifica, Suite 900
Irvine, California 92618
(w/o enclosures)

Mr. Eric Bradley
Thomson Reuters
2395 Midway Road
Carrollton, Texas 75006
(w/o enclosures)

MAY 11 2017 RV

At 2:35 p.m.
Veiva L. Price, District Clerk

Cause No. D-1-GN-15-004134

MARSHALL & SWIFT/BOECKH, LLC,
PLAINTIFF,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

THE HONORABLE KEN PAXTON,
Attorney General of Texas, and the
TARRANT APPRAISAL DISTRICT,
DEFENDANTS.

201st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Marshall & Swift/Boeckh, LLC ("Marshall & Swift"), sought to withhold certain information which is in the possession Tarrant Appraisal District ("TAD") from public disclosure. All matters in controversy between Plaintiff, Marshall & Swift, and Defendants, The Honorable Ken Paxton, Attorney General of Texas ("Attorney General"), and TAD arising out of this lawsuit have been resolved by a Settlement Agreement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of this Agreed Final Judgment.

The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Tracy Stanley, on April 19, 2017, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that TAD will withhold the designated portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. Verification of the certified mailing of the letter is attached to this judgment as Exhibit "B."

The requestor has not filed a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

An additional requestor, Ms. Susan Bawcom, intervened in this lawsuit, received some information from TAD, non-suited her claims, and withdrew the remainder of her request.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:


1. Marshall and Swift, the Attorney General, and TAD have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, which is contained in Tarrant County restaurant property data, is excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, TAD will redact the information in conformity with the redactions proposed by Marshall Swift in its letter and exhibits dated March 27, 2017 before the information is released to Mr. Stanley. No additional information will be released to Ms. Bawcom, as she has withdrawn her request.
2. Attorney General Letter Rulings OR2015-17644 and OR2015-17474 shall not be relied on as previous determinations.
3. All court costs and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Marshall & Swift, the Attorney General, and TAD and is a final judgment.

SIGNED the 11 day of May, 2017.


PRESIDING JUDGE

AGREED


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ATTORNEY FOR DEFENDANT TARRANT APPRAISAL DISTRICT

A

MARSHALL & SWIFT/BOECKH, LLC,
PLAINTIFF,

V.

THE HONORABLE KEN PAXTON,
Attorney General of TEXAS, and the
TARRANT APPRAISAL DISTRICT,
DEFENDANTS.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Marshall & Swift/Boeckh, LLC, ("Marshall & Swift"), The Honorable Ken Paxton, Attorney General of Texas ("the Attorney General"), and the Tarrant Appraisal District ("TAD"). This Agreement is made on the terms set forth below.

Background

This case is a challenge to Open Records Letter rulings OR2015-17644 and OR2015-17474. Marshall & Swift disputed the rulings, claiming some of the information is proprietary. Marshall & Swift filed the above-styled lawsuit to preserve its rights under the PIA. Shortly after the lawsuit was filed, the requestor in Letter Ruling OR2015-17474, Ms. Susan Bawcom, intervened in the lawsuit. TAD provided some information to Ms. Bawcom, who was satisfied with the information she received and withdrew the remainder of her request. Mr. Tracy Stanley, the requestor in Letter Ruling OR2015-17644, has not intervened in the lawsuit.

Marshall & Swift then submitted information and briefing to the Attorney General establishing that some of its information is excepted from disclosure under Texas Government Code section 552.104. The information subject to this settlement

was not released to Ms. Bawcom. TAD and the Attorney General agree to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into a settlement pursuant to which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Marshall and Swift, the Attorney General, and TAD have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, which is contained in Tarrant County restaurant property data, is excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, TAD will redact the information in conformity with the redactions proposed by Marshall Swift in its letter and exhibits dated March 27, 2017 before the information is released to Mr. Stanley. No additional information will be released to Ms. Bawcom, as she has withdrawn her request.
2. Marshall & Swift, TAD, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to Mr. Stanley.
3. The Attorney General agrees that he will also notify Mr. Stanley, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest Marshall & Swift's right to have TAD withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.
5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.
6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.
7. Marshall & Swift warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Marshall & Swift has against the Attorney General and/or TAD arising out of the matters described in this Agreement.
8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against Marshall & Swift and/or TAD arising out of the matters described in this Agreement.
9. TAD warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of TAD and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that TAD has against Marshall & Swift and/or the Attorney General arising out of the matters described in this Agreement.


10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

MARSHALL & SWIFT/BOECKH, LLC

By: 
name: Steve Brewer
title: SVP, CoreLogic

Date: 18 April 2017

**KEN PAXTON, ATTORNEY GENERAL
OF TEXAS**

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: 4-18-17

TARRANT APPRAISAL DISTRICT

By: 
name: Todd A. Clark
firm: WALSH GALLEGOS TREVINO RUSSO & KYLE P.C
Date: 4-18-17