



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 17, 2017

Ms. Lauren Downey  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2017-15921

Dear Ms. Downey:

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# 666036 (PIR Nos. 17-46639, 17-46718, and 17-47104).

The Office of the Attorney General (the "OAG") received three requests from different requestors for information pertaining to a specified request for proposals, including the contract at issue and evaluative materials. The OAG states it will release some information. The OAG states it will continue to rely on Open Records Letter No. 2017-08491 (2017) with respect to some of the requested information.<sup>1</sup> Although the OAG takes no position as to whether the submitted information is excepted under the Act, the OAG states release of this information may implicate the proprietary interests of Bridgepoint Consulting; CSG Government Solutions ("CSG"); Ernst & Young LLP; Gartner Consulting; KPMG LLP ("KPMG"); The Greentree Group; North Highland Worldwide Consulting ("North Highland"); Public Consulting Group, Inc. ("PCG"); POD, Inc.; SLI Global Solutions, LLC ("SLI"); Software Engineering Services; and the University of Texas at Austin. Accordingly, the OAG states it notified these third parties of the requests for information and of their rights to submit arguments to this office as to why the information at issue should not be

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<sup>1</sup>In Open Records Letter No. 2017-08491, this office determined the OAG must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining information.

released. *See* Gov't Code §§ 552.304, .305(d); *see also* Open Records Decision No. 542 at 3 (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 on behalf of CSG, KPMG, North Highland, PCG, and SLI. We have considered the submitted arguments and reviewed the submitted information.

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

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*, 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. KPMG, North Highland, PCG, and SLI assert they have competitors and release of their information at issue would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we conclude the OAG may withhold the information we marked under section 552.104(a) because these third parties established the release of the information at issue would give advantage to a competitor or bidder.<sup>2</sup>

Section 552.110 of the Government Code 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:

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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.<sup>3</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 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).

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

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<sup>3</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).

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.

Upon review, we find CSG, PCG, and SLI have demonstrated portions of their information constitute commercial or financial information, the release of which would cause the companies substantial competitive injury. Accordingly, the OAG must withhold the information we marked under section 552.110(b) of the Government Code.<sup>4</sup> We also find CSG has demonstrated its customer information constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Thus, to the extent CSG’s customer information is not publicly available on its company website, the OAG must withhold CSG’s customer information under section 552.110(b). However, to the extent CSG’s customer information is publicly available on the company’s website, it may not be withheld under section 552.110(b). In that event, we will address CSG’s argument under section 552.110(a) for its customer information that is publicly available on the company’s website. We find CSG has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining information would cause the company substantial competitive harm; thus, the OAG may not withhold CSG’s remaining information under section 552.110(b).

CSG also argues some of its information constitutes trade secrets under section 552.110(a) of the Government Code. To the extent CSG’s customer information is publicly available on its website, it may not be withheld under section 552.110(a). Additionally, upon review, we find CSG has failed to establish a *prima facie* case its remaining information at issue meets the definition of a trade secret and has not demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORDs 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim), 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 further find CSG has not demonstrated the necessary factors to establish a trade secret claim for its remaining information at issue. *See* ORD 402. Therefore, the OAG may not withhold any of CSG’s remaining information at issue under section 552.110(a).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>5</sup>

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<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>5</sup>This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the OAG must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the OAG must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note, and KPMG asserts, some of the remaining information may be protected by copyright. A custodian of public records must comply with the 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.

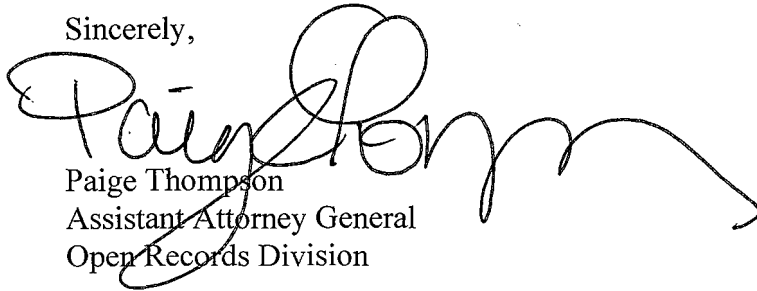
In summary, the OAG may withhold the information we marked under section 552.104(a) of the Government Code. The OAG must withhold the information we marked under section 552.110(b) of the Government Code. To the extent CSG's customer information is not publicly available on its company website, the OAG must withhold CSG's customer information under section 552.110(b) of the Government Code. The OAG must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The remaining information must be

released; however, any information protected by copyright may only be released 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 666036

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

12 Third Parties  
(w/o enclosures)