



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 4, 2017

Ms. Angela Hough  
Assistant General Counsel  
North Texas Tollway Authority  
P. O. Box 260729  
Plano, Texas 75026

OR2017-17612

Dear Ms. Hough:

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# 669349 (NTTA File No. 2017-01350).

The North Texas Tollway Authority (the "authority") received a request for submissions related to a specified bid. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of BridgeWork Partners, LLC; KL Glaspy Group, LLC; Pridestaff, Inc.; and Randstad General Partners (US) LLC ("Randstad"). Accordingly, you state you notified these third parties of the request for information and their right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 comments from Randstad. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-14240 (2017). In that ruling, we determined the authority must withhold the insurance policy numbers in the information at issue under section 552.136 of the Government Code and must release the remaining information, but may only release any copyrighted information in accordance with copyright law. We understand the authority did so. Although, the authority notified Randstad pursuant to section 552.305 of the Government Code when the authority received the previous request for information, Randstad did not submit comments objecting

to the release of its information in the previous ruling. Accordingly, in our previous ruling, we determined the authority must release Randstad's information at issue. Randstad now argues its pricing information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. We note section 552.104 does not prohibit the release of information or make information confidential. *See id.* § 552.104. Thus, the authority may not withhold Randstad's previously released information under section 552.104 of the Government Code. However, because section 552.110 makes information confidential by law, we will address Randstad's claims under this exception. Nevertheless, with regard to the remaining information, there is no indication the law, facts, and circumstances on which the prior ruling was based has changed. Accordingly, with regard to the remaining information, we conclude the authority must continue to rely on Open Records Letter No. 2017-14240 as a previous determination and withhold or release the identical information not pertaining to Randstad's pricing information in accordance with that ruling; however, any information protected by copyright may only be released in accordance with copyright law. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Randstad claims its pricing 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(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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). 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>1</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* Open Records Decision No. 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).

As mentioned above, Randstad’s information was subject to Open Records Letter No. 2017-14240. In the prior ruling, the authority notified Randstad of the request for information pursuant to section 552.305 of the Government Code. Randstad did not object to the release of its pricing information. Since the issuance of the previous ruling on June 27, 2017, Randstad has not disputed this office’s conclusion regarding the release of the information at issue. In this regard, we find Randstad has not taken any measures to protect its pricing information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Randstad substantial harm. *See* Gov’t Code § 552.110; RESTATEMENT OF TORTS § 757

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<sup>1</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).

cmt. b; *see also* ORDs 661, 319 at 2, 306 at 2, 255 at 2. Accordingly, we conclude the authority may not withhold Randstad's pricing information under section 552.110 of the Government Code.

In summary, the authority must continue to rely on Open Records Letter No. 2017-14240 as a previous determination and withhold or release the identical information not pertaining to Randstad's pricing information in accordance with that ruling; however, any information protected by copyright may only be released in accordance with copyright law. The authority 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 669349

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)