



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2017

Ms. Selina Ferdous
Assistant County Attorney
Harris County
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2017-27876

Dear Ms. Ferdous:

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# 686835 (CA File No. 17HSP0689).

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for information pertaining to a specified request for proposals, including communications and evaluation documents.¹ We understand the system has released some information. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of 911 Interpreters, Inc.; American Sign Language Services Corporation ("ASLSC"); Corporate Translation Services, Inc. d/b/a CTS Language Link ("CTS"); CyraCom, LLC ("CyraCom"); Globo Language Solutions, LLC; Language Line Solutions, Inc.; Language Select, LLC d/b/a United Language Group; Language Services Associates, Inc. ("Language Services"); Linguistica International, Inc.; MasterWord Services, Inc. ("MasterWord"); Propio Language Services, LLC ("Propio"); Stratus Video, LLC ("Stratus"); Teletlanguage, Inc.; TransPerfect Translations ("TransPerfect"); Universe Technical Translation, Inc. ("Universe"); and WorldWide Interpreters, Inc. Accordingly, the

¹We note the system did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b). Nonetheless, because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

system states, and provides documentation showing, it notified each third party of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 CTS, CyraCom, Language Services, MasterWord, Stratus, TransPerfect, and Universe.² We have reviewed the submitted information and the submitted arguments.

Initially, we note the requested proposals were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-20247 (2017). In Open Records Letter No. 2017-20247 we determined: (1) the system may withhold the information CTS and MasterWord marked and ASLSC's, TransPerfect's, and Universe's information we marked and indicated under section 552.104(a) of the Government Code; (2) to the extent Select's and Telelanguage's customer information is not publicly available on their respective websites, the system must withhold Select's and Telelanguage's customer information under section 552.110(a) of the Government Code; (3) the system must withhold CyraCom's, Select's, and Telelanguage's information we have marked under section 552.110(b) of the Government Code; (4) the system must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code; and (5) the system must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. We also note some of the third parties now seek to withhold some of their information which may have been previously ordered released under section 552.104 of the Government Code. Section 552.007 of the Government Code provides that, 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 under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the system may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although these third parties now raise section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the system may not now withhold any of the previously released information under section 552.104 of the Government Code on behalf of these third parties. We also note Language Services,

²We also note we have received comments from Propio, but they claim no exceptions and make no arguments against disclosure of the requested information.

MasterWord, Stratus, and TransPerfect now seek to withhold some of their information which may have been previously ordered released in these rulings under section 552.110 of the Government Code. We further note that, although the system notified Language Services and Stratus pursuant to section 552.305 of the Government Code when the system received the previous request for information, Language Services and Stratus did not timely submit comments objecting to the release of their information at issue in the previous ruling. However, because section 552.110 makes information confidential by law, we will address Language Service's and Stratus's arguments under section 552.110 for the information that was previously released. Further, with regard to the submitted information that was not previously released, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the submitted information was not previously released in Open Records Letter No. 2017-20247, we conclude the system must continue to rely on Open Records Letter No. 2017-20247 as a previous determination and withhold the identical information in accordance with that ruling.³ 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). With respect to the information that was not at issue in the previous ruling, we will consider the submitted arguments.

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

CyraCom, CTS, Language Services, MasterWord, TransPerfect, and Universe seek to withhold some of their information within the communications and evaluation documents that were not subject to Open Records Letter No. 2017-20247 under section 552.104(a) of the Government Code. Section 552.104 excepts from disclosure "information that, if

³As our ruling is dispositive for the information at issue, we need not address the remaining arguments against disclosure of this information.

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. We note the information within the communications and evaluation documents is contained within the proposals that were subject to Open Records Letter No. 2017-20247. CTS, CyraCom, MasterWord, TransPerfect, and Universe state they have competitors. In addition, these third parties state release of their information in the communications and evaluation documents would give advantage to their competitors. After review of the information at issue and consideration of the arguments, we find CTS, CyraCom, MasterWord, TransPerfect, and Universe have established the release of their information within the communications and evaluation documents that was also in the portions of the proposals that were withheld pursuant to Open Records Letter No. 2017-20247 would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we have indicated under section 552.104(a) of the Government Code.⁴

Language Services also states it has competitors and seeks to withhold its information under section 552.104. However, in the prior ruling, the system notified Language Services of the request for information pursuant to section 552.305 of the Government Code. Language Services did not object to the release of its information. Thus, we find Language Services, has not taken any measures to protect its information in order for this office to conclude the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may not withhold any portion of Language Service’s information under section 552.104(a) of the Government Code.

Language Services, MasterWord, Stratus, and TransPerfect claim portions of their information at issue are excepted 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* Open Records Decision No. 552 (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

⁴As our ruling is dispositive for this information, we need not address MasterWord’s and TransPerfect’s arguments under section 552.110 of the Government Code against disclosure of this information.

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.⁵ 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. *See* 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 Record Decision Nos. 255, 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 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 (to prevent

⁵The 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).

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, some of the information at issue was subject to Open Records Letter No. 2017-20247. Additionally, as previously mentioned, the information within the currently requested communications and evaluation documents at issue is contained within the proposals that were subject to Open Records Letter No. 2017-20247. In the prior ruling, Language Services's and Stratus's information was ruled to be released because the system notified Language Services and Stratus of the request for information pursuant to section 552.305 of the Government Code and the companies did not object to the release of their information. Further, portions of MasterWord's and TransPerfect's information were ruled to be released in Open Records Letter No. 2017-20247. Since the issuance of the previous ruling on September 5, 2017, Language Services, MasterWord, Stratus, and TransPerfect have not disputed this office's conclusion regarding the release of the information. Accordingly, we find Language Services, MasterWord, Stratus, and TransPerfect have not taken any measures to protect their 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 Language Services, MasterWord, Stratus, or TransPerfect substantial harm. *See* Gov't Code § 552.110; RESTATEMENT OF TORTS § 757 cmt. b; *see also* ORDs 661, 319 at 2, 306 at 2, 255 at 2. Additionally, with respect to the remaining information, we conclude Language Services, MasterWord, Stratus, and TransPerfect have not shown any of the remaining information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See id.* § 552.110(a); ORD 402 at 2-3. Furthermore, we find Language Services, MasterWord, Stratus, and TransPerfect have failed to demonstrate the release of any of the remaining information would result in substantial harm to their competitive positions. *See* Gov't Code § 552.110(b). Thus, we conclude the system may not withhold any portion of Language Services's, MasterWord's, Stratus's, or TransPerfect's remaining information under section 552.110 of the Government Code.

In summary, the system must continue to rely on Open Records Letter No. 2017-20247 as a previous determination and withhold or release the identical information in accordance with that ruling. The system may withhold the information we have indicated under section 552.104(a) of the Government Code. The system 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 686835

Enc. Submitted documents

c: Requestor
(w/o enclosures)

15 Third Parties
(w/o enclosures)