



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Mr. Andrew Devine  
Senior Associate Attorney  
Parkland Health & Hospital System  
5200 Harry Hines Boulevard  
Dallas, Texas 75235

OR2019-03124

Dear Mr. Devine:

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# 749145 (Ref. No. 18-59).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for certain submissions submitted in response to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Data Search Collection, Inc. ("Data"); Meduit Group, LLC ("Meduit"); MiraMed Virtual Recovery, LLC ("MiraMed"); and United Collection Bureau, Inc. ("United"). Accordingly, you state, and provide documentation showing, you notified these interested 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); *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 Data, Meduit, and MiraMed. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Data objects to disclosure of information the system has not submitted to this office for review. This ruling does not address information that was not submitted by the system and is limited to the information the system has submitted for our review.<sup>1</sup> *See*

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from United. Thus, we have no basis to conclude United has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 United may have in the information.

Section 552.104(a) of the Government Code exempts 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. Data and MiraMed state they have competitors. In addition, Data and MiraMed state release of the information at issue would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Data and MiraMed have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold Data's submitted information and the information we have indicated under section 552.104(a) of the Government Code.<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). 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 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

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

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>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. *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 (1980), 232 (1979), 217 (1978).

Meduit claims portions of its information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we find Meduit has established a *prima facie* case that its customer information constitutes trade secret information. Therefore, the customer information at issue must generally be withheld under section 552.110(a) of the Government Code. However, to the extent any of the customer information Meduit seeks to withhold has been published on the company's website, such information is not confidential under section 552.110(a). We also conclude Meduit has failed to establish a *prima facie* case that any portion of its remaining information meets the definition of a trade secret. We further find Meduit has not demonstrated the necessary factors to establish a trade secret claim for its remaining information. *See* ORDs 402, 319 at 2 (information relating to organization,

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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).

personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). Therefore, none of Meduit's remaining information may be withheld under section 552.110(a).

In summary, the system may withhold Data's submitted information and the information we have indicated under section 552.104(a) of the Government Code. The system must withhold Meduit's customer information under section 552.110(a) of the Government Code to the extent Meduit's customer information is not publicly available on the company's website. 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](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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/som

Ref: ID# 749145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)