



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 12, 2019

Mr. Christopher B. Gilbert  
Counsel for the Dissolution Committee  
for the Former Board of Dallas County Schools Trustees  
Thompson & Horton, L.L.P.  
3200 Southwest Freeway, Suite 2000  
Houston, Texas 77027

OR2019-04018

Dear Mr. Gilbert:

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# 750093.

The Dissolution Committee for the former board of Dallas County Schools (the "committee"), which you represent, received a request for any agreement between the committee and BusPatrol America, L.L.C. ("BusPatrol"), and the agreement referenced in a specified press release. The committee claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. Additionally, the committee states release of the submitted information may implicate the proprietary interests of BusPatrol. Accordingly, the committee states, and provides documentation showing, it notified BusPatrol of the request for information and of the 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 BusPatrol. We have reviewed the submitted arguments and the submitted information.

Initially, we must address the committee's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The committee received the request for information on November 21, 2018. We understand the committee was closed on November 22, 2018, and November 23, 2018. The committee does not inform us it was closed for any additional business days between November 21, 2018, and December 14, 2018. Accordingly, the committee was required to provide the information required by section 552.301(e) by December 14, 2018. However, the committee provided the information required by section 552.301(e) via this office's electronic filing system on January 3, 2019. Accordingly, we conclude the committee failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The committee informs us BusPatrol may have protected proprietary interests in the submitted information. Accordingly, we will consider whether the submitted information may be withheld on behalf of BusPatrol. Further, section 552.136 of the Government Code can provide a compelling reason to overcome the presumption of openness.<sup>1</sup> Therefore, we will address the applicability of section 552.136 to the submitted information. However, we find the committee has failed to establish a compelling reason to address its claimed exception.

BusPatrol asserts the submitted information is excepted under section 552.103 of the Government Code. However, we note section 552.103 is designed to protect the interests

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of governmental bodies and not the interests of third parties. Gov't Code. § 552.103 (excepts from disclosure litigation or settlement negotiations involving the state or a political subdivision). As noted above, the committee waived its claim under section 552.103 of the Government Code for the submitted information. *See id.* § 552.302; *see also id.* § 552.022(a)(18) (settlement agreement to which a governmental body is party is not excepted from required disclosure unless made confidential under the Act or other law); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Thus, we do not address BusPatrol's argument under section 552.103 of the Government Code.

BusPatrol contends the submitted information is excepted from disclosure under section 552.110 of the Government Code.<sup>2</sup> Section 552.110 protects (1) trade secrets obtained from a person 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). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the

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<sup>2</sup>Although BusPatrol also raises section 552.101 of the Government Code, BusPatrol has not provided any arguments to support this exception. Therefore, we do not address the applicability of this exception to the submitted information. *See Gov't Code* §§ 552.301, .302.

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* 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). 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) of the Government Code 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 (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).

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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).

BusPatrol asserts the submitted information contains trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude BusPatrol has failed to establish a *prima facie* case that any portion of the information meets the definition of a trade secret. We further find BusPatrol has not demonstrated the necessary factors to establish a trade secret claim for information. *See* ORD 402. Therefore, the committee may not withhold any of the information under section 552.110(a) of the Government Code.

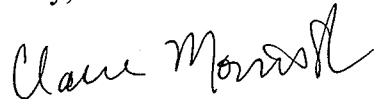
BusPatrol further argues the information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find BusPatrol has failed to demonstrate the release of the information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Furthermore, this office considers the pricing information in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a settlement agreement with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(18); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, the committee may not withhold any of the submitted information under section 552.110(b) of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding 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"). Accordingly, the committee must withhold the routing and bank account numbers within the submitted information under section 552.136 of the Government Code. The committee 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 750093

c: Requestor

Third Party