



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Mr. Mark C. Kratovil  
Assistant Criminal District Attorney  
Tarrant County  
401 West Belknap, 9<sup>th</sup> Floor  
Fort Worth, Texas 76196-0201

OR2019-21649

Dear Mr. Kratovil:

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# 779031.

The Tarrant County Purchasing Department (the "county") received a request for information pertaining to specified contracts during a specified time period. 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 the following third parties: Elite TransLingo; Legal Language Services ("Legal Language"); Certified Translations and Interpreters, Inc.; Primary Language Interpreters; TransPerfect Translators International, Inc. ("TransPerfect"); LanguageLine Services, Inc.; Catholic Charities Diocese of Fort Worth, d/b/a Translation & Interpretation Network; Universal Technical Translation, Inc.; and MasterWord Services, Inc. ("MasterWord"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 MasterWord and Legal Language. We have reviewed the submitted information and the submitted arguments.

Initially, we note some of the responsive information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-25347 (2016). In Open Records Letter No. 2016-25347, we concluded the county (1) may withhold the information MasterWord and TransPerfect indicated under section 552.104(a) of the Government Code, (2) must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code, and (3) must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. We note MasterWord seeks to withhold portions of its information under sections 552.104 and 552.110 of the Government Code and Legal Language raises section 552.110 of the Government Code for portions of its information. 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 county may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although MasterWord raises section 552.104 of the Government Code for its 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 county may not now withhold any of MasterWord'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 MasterWord's and Legal Language's arguments under this section for the information that was previously released. Additionally, with regard to the submitted information that was not previously released, there is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the county must continue to rely on Open Records Letter No. 2016-25347 as a previous determination and withhold the identical information that was not previously released in accordance with that ruling. *See* ORD 673. With respect to the information that was not at issue in the previous ruling, we will consider MasterWord's argument under section 552.104 of the Government Code.

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

MasterWord asserts some of the submitted information is excepted from public disclosure under section 552.104 of the Government Code. Section 552.104(a) 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. MasterWord states it has competitors. In addition, MasterWord states release of the information at issue would give advantage to its competitors. Based on these representations and our review of the information at issue, we find MasterWord has established the release of the information at issue would give advantage to a competitor or bidder. Thus, to the extent the information at issue was not previously ordered released in Open Records Letter No. 2016-25347, we conclude the county may withhold the information MasterWord has indicated under section 552.104(a) of the Government Code.<sup>1</sup>

MasterWord also asserts its information at issue, some of which may have been released pursuant to Open Records Letter No. 2016-25347, is excepted from disclosure under section 552.110 of the Government Code. In addition, Legal Language asserts some of the submitted information is excepted from public disclosure under section 552.110 of the Government Code. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov’t Code § 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

---

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

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>2</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, 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.

We note, to the extent MasterWord's and Legal Language's information was previously ordered released in Open Records Letter No. 2016-25347, we address their arguments under

---

<sup>2</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).

section 552.110 of the Government Code. However, since the issuance of the previous ruling, MasterWord and Legal Language have not disputed this office's conclusion regarding the release of the information. In this regard, we find MasterWord and Legal Language have not taken any measures to protect its 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 MasterWord or Legal Language 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. Accordingly, we conclude the county may not withhold MasterWord's or Legal Language's information that was previously ordered released in Open Records Letter No. 2016-25347 under section 552.110 of the Government Code.

Next, with respect to the information that was not at issue in the previous ruling, we will consider Legal Language's argument under section 552.110 of the Government Code. Legal Language claims some of the remaining information is excepted from disclosure under section 552.110(a) of the Government Code. Upon review, we find Legal Language has established a *prima facie* case its client references at issue constitute trade secret information for purposes of section 552.110(a). Accordingly, to the extent the client references Legal Language seeks to withhold is are not publicly available on its website, the county must withhold Legal Language's client references, which we have marked, under section 552.110(a). However, Legal Language has failed to establish a *prima facie* case the remaining information at issue meets the definition of a trade secret. Moreover, we find Legal Language has not demonstrated the necessary factors to establish a trade secret claim for the remaining information at issue. *See* ORD 402. Therefore, none of the remaining information at issue may be withheld under section 552.110(a) of the Government Code.

Legal Language argues some of the information at issue consists of commercial or financial information, the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Legal Language has demonstrated the information at issue, which we have marked, constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the county must withhold the information we marked under 552.110(b) of the Government Code. However, we find Legal Language failed to demonstrate the release of the remaining information at issue would result in substantial harm to its competitive position. Therefore, the county may not withhold any of the remaining information under section 552.110(b) of the Government Code.

Section 552.136 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 a governmental body is confidential. Gov't Code § 552.136; *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). Accordingly, the county must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the materials at issue 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, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2016-25347, the county must rely on that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. However, to the extent the information at issue was not subject to Open Records Letter No. 2016-25347, the county may withhold the information MasterWord has indicated under section 552.104(a) of the Government Code, and the county must withhold the information we marked under section 552.110(a) and section 552.110(b) of the Government Code on behalf of Legal Language. The county must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The remaining information must be released; however, any information that is subject to copyright may be released only 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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 779031

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

9 Third-Parties  
(w/o enclosures)