



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 30, 2020

Mr. Ross Laughead  
General Counsel  
Alamo Colleges District  
2222 North Alamo Street Room 304  
San Antonio, Texas 78215

OR2020-02848

Dear Mr. Laughead:

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# 809156.

The Alamo Colleges District (the "district") received a request for the bid tabulation, award letter, and the proposal response by the winning vendor for bid number CSP19A015. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of 22nd Century Technologies, Inc.; AppleOne Employment Services ("AppleOne"); LOD Resource Group; Manpower; and Renhill Staffing Services of Texas. Accordingly, the district 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 AppleOne. We have reviewed the submitted information and the submitted arguments.

Initially, we note some of the submitted information is not responsive to the instant request because it does not consist of the bid tabulation, award letter, or the proposal response by the winning vendor for bid number CSP19A015. This ruling does not address the public availability of the non-responsive information, which we have marked, and the district need not release it in response to the request. Additionally, we note the responsive information only consists of the winning vendor's proposal. To the extent the bid tabulation or award letter existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

AppleOne asserts some of its information is excepted from disclosure under section 552.110 of the Government Code. 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 Restatement's list of six trade secret factors.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b. This

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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];

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

AppleOne asserts some of its information constitutes trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude AppleOne has established a *prima facie* case that the information at issue constitutes trade secret information. Accordingly, to the extent AppleOne’s customer information, which we have marked, is not publicly available on AppleOne’s website, the district must withhold AppleOne’s customer information under section 552.110(a) of the Government Code.<sup>2</sup> The district 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under

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- (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.

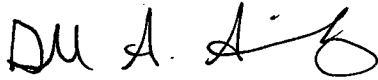
RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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

Mr. Ross Laughead - Page 4

the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/mo

Ref: ID# 809156

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)