

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 21-007

RESPONDENT: Office of Court Administration

DATE: May 21, 2021

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Wheless, Judge Olen Underwood; Judge Missy Medary; Judge Susan Brown

Petitioner requested copies of certain documents and responses received by Respondent in response to a request for offer (RFO) issued by Respondent. Respondent provided Petitioner copies of RFO responses submitted by the vendors, including an offer containing redactions from a specific vendor (“Vendor”). At the time Vendor submitted its offer under the RFO, Vendor identified the redacted information as trade secret and proprietary information that should be withheld in the event Respondent received a records request for the Vendor’s offer. Respondent informed Petitioner that certain information in Vendor’s RFO response would be withheld from disclosure under Rule 12.5(i)(3) of the Rules of Judicial Administration as “trade secret or commercial or financial information,” and Petitioner filed this appeal requesting access to the redacted RFO information. Respondent notified Vendor of the appeal, and Vendor submitted a letter to Respondent asserting that the redacted RFO information was proprietary trade secret information that should not be released by Respondent.

This appeal presents an issue of first impression for the special committee. Rule 12.5(i)(3) exempts from disclosure any judicial record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute, or common law, including information that relates to “a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.” A “trade secret” is “any formula, pattern, device or compilation of information which is used in one’s business and presents an opportunity to obtain an advantage over competitors who do not know it or use it.” *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003). To determine whether a trade secret exists, courts look to the following six factors provided in the Restatement of Torts in the context of the surrounding circumstances:

“(1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; [and] (6) the ease or difficulty with which the information could be

properly acquired or duplicated by others.” *In re Union Pac. R.R. Co.*, 294 S.W.3d 589 (Tex. 2009) (citing *Bass*, 113 S.W.3d at 739

We have reviewed the redacted information and Respondent’s trade secret assertions in light of the factors outlined in the above-listed case law, and we agree that the redacted information relates to Vendor’s trade secrets and should be withheld. However, we instruct Respondent to obtain an unsworn declaration¹ from Vendor confirming the assertions made in its letter. We also instruct Respondent to confirm that only the information identified by Vendor in its letter to this committee has been redacted from the responsive document. Lastly, though Vendor asserted that its line-item pricing and hourly rates should also be withheld, we were not provided a copy of that information for our review. We request that this information be submitted for our review no later than ten days following the date of this decision.

¹ See Sec. 132.001 of the Texas Civil Practice and Remedies Code.