



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2015

Ms. Kerri L. Butcher  
Chief Counsel  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2015-16875

Dear Ms. Butcher:

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# 575484.

The Capital Metropolitan Transportation Authority (the "authority") received a request for all proposals, pricing forms, and evaluation forms pertaining to request for proposals number 131771. You state the authority will provide some of the requested information to the requestor. Although you take no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of First Transit, Inc. ("First Transit"); Maruti Fleet & Management, LLC ("Maruti"); McDonald Transit Associates, Inc. ("McDonald"); MV Transportation ("MV"); and National Express Transit Corporation ("NETC"). Accordingly, you state, and provide documentation showing, the authority notified these 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from MV. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) of the Government Code 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 not received comments from First Transit, Maruti, McDonald, or NETC explaining why the submitted information should not be released. Therefore, we have no basis to conclude First Transit, Maruti, McDonald, and NETC have protected proprietary interests 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 authority may not withhold the submitted information on the basis of any proprietary interests First Transit, Maruti, McDonald, or NETC may have in the information.

Next, we note MV objects to disclosure of information the authority has not submitted to this office for review. This ruling does not address information that was not submitted by the authority and is limited to the information the authority has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex. June 19, 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 \*9. MV states it has competitors. In addition, MV states it regularly competes in government procurements and the release of its Labor Relations Plan and Employee Handbook would give advantage to its competitors because the competitors could tailor their own bid responses to compete against MV more effectively. After review of the information at issue and consideration of the arguments, we find MV has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold MV's Labor Relations Plan, which we have marked, and Employee Handbook under section 552.104(a) of the Government Code.

We note some of the remaining information is protected by section 552.101 of the Government Code in conjunction with common-law privacy and by section 552.136 of the Government Code.<sup>1</sup> Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory,

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

or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681 -82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not related to a financial transaction between an individual and a governmental body is intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the remaining information 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, the authority may withhold MV’s Labor Relations Plan, which we have marked, and Employee Handbook under section 552.104(a) of the Government Code. The authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the insurance policy numbers we have marked under section 552.136 of the Government Code. The authority must release the remaining information, but may only release any copyrighted information 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/dls

Ref: ID# 575484

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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