



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2020

Mr. Jacob LaBorde
Public Information Coordinator
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2020-16452

Dear Mr. LaBorde:

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# 832639 (Ref. No. 2020-04-897).

The Capital Metropolitan Transportation Authority (the "authority") received a request for certain information pertaining to a specified request for proposals. You state the authority has released some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of LeFleur Transportation of Texas, Inc.; MV Transportation, Inc.; Ride Right, LLC d/b/a Austin Ride Right, LLC ("Ride Right"); and Star Shuttle, Inc. Accordingly, you state, and provide documentation demonstrating, the authority notified these interested third parties of the request for information and of their 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 MTM Transit, LLC ("MTM"), formerly known as Ride Right. 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) 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 any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the remaining

third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the authority may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

MTM asserts a portion of its information at issue is excepted from disclosure under section 552.110(c) of the Government Code.¹ Section 552.110(c) of the Government Code excepts from disclosure “commercial 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[.]” *Id.* § 552.110(c). MTM asserts the information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find MTM has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the authority must withhold the information we indicated under section 552.110(c) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.² *See id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, then the authority must withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024 or a governmental body does pay for the cellular telephone service, then the authority may not withhold the cellular telephone numbers we marked under section 552.117(a)(1).

¹ Although MTM cites to former section 552.110(b) of the Government Code in its brief, we understand MTM to raise section 552.110(c) of the Government Code based on the substance of its arguments.

² 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)*.

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Accordingly, the authority must withhold all visible license plates, driver's license states, and driver's license expiration dates within the remaining information under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code 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 or for a government body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the authority must withhold all insurance policy and credit card numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information appears to 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 must withhold the information we indicated under section 552.110(c) of the Government Code. If the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, then the authority must withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code. The authority must withhold all visible license plates, driver's license states, and driver's license expiration dates within the remaining information under section 552.130 of the Government Code. The authority must withhold all insurance policy and credit card numbers within the remaining information under section 552.136 of the Government Code. The authority must release the remaining information; however, any information subject to copyright may only be released 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 <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 the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 832639

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 4 Third Parties
(w/o enclosures)