



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Ms. Lindsey McPheeters  
Interim General Counsel  
Round Rock Independent School District  
1 Chisholm Trail, Suite 400  
Round Rock, Texas 78681

OR2020-27552

Dear Ms. McPheeters:

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# 851872 (TPIA 2021-062).

The Round Rock Independent School District (the "district") received a request for responses to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.153 of the Government Code.<sup>1</sup> You also state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you indicate you notified Dearborn National Life Insurance Company ("Dearborn"); Metropolitan Life Insurance Company ("MetLife"); Ochs, Inc.; Securian Financial Group ("Securian"); Standard Insurance Company; and Sun Life Assurance Company of Canada 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 Dearborn, MetLife, and Securian. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> Although you also raise section 552.101 of the Government Code for the submitted information, you provide no arguments explaining the applicability of this exception. Therefore, we assume you no longer assert section 552.101. *See* Gov't Code §§ 552.301, .302.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request for information because it does not pertain to the specified request for proposals. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

Next, we note Securian argues against the release of some information that was not submitted by the district. This ruling does not address information that was not submitted by the district and is limited to the information the district 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).

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the responsive information and consideration of the arguments, we find the district has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the district may not withhold the information at issue under section 552.104(a).

Section 552.1101 of the Government Code provides, in relevant part:

- (a) Except as provided by Section 552.0222, submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

- (1) reveal an individual approach to:

- (A) work;
- (B) organizational structure;
- (C) staffing;
- (D) internal operations;
- (E) processes; or
- (F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Dearborn asserts disclosure of some of its information would reveal an individual approach to its organizational structure, internal operations, processes, and pricing and give advantage to its competitors. Upon review, we find Dearborn has demonstrated the applicability of section 552.1101(a) to some of its information at issue. Accordingly, the district must withhold the information we marked under section 552.1101 of the Government Code.<sup>2</sup> However, we find some of Dearborn's remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). Securian also argues section 552.1101 is applicable to portions of its information. However, we find Securian has failed to provide specific factual evidence demonstrating any portion of its information at issue is subject to section 552.1101(a). Therefore, the district may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *Id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

*Id.* § 552.110(a). Section 552.110(c) of the Government Code exempts 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b).

Dearborn, MetLife, and Securian argue some of their information is subject to section 552.110 of the Government Code. Upon review, we find MetLife has demonstrated portions of its information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent MetLife’s customer information is not available on its website, the district must withhold MetLife’s customer information and the information we marked under section 552.110(c) of the Government Code.<sup>3</sup> However, we find MetLife and Dearborn’s remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Further, we find Securian has failed to provide specific factual evidence demonstrating any portion of its information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

Section 552.136 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 governmental body is confidential.”<sup>4</sup> *Id.* § 552.136(b); *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 district must withhold the insurance policy numbers in the remaining responsive information under section 552.136 of the Government Code.

Section 552.153 of the Government Code reads, in relevant part, as follows:

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and “responsible governmental entity” have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer; [or]

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means[.]

Gov't Code § 552.153(a), (b)(2)(A)–(B). Section 2267.001(10) of the Government Code defines a “qualifying project” as the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

*Id.* § 2267.001(10). Further, section 2267.001(11) defines a “responsible governmental entity” as “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). We note the information at issue pertains to proposals for employee benefits. You do not inform us the information at issue relates to proposals for a qualifying project that is authorized under chapter 2267 of the Government Code. Thus, you have failed to demonstrate the applicability of section 552.153(b) to any portion of the remaining responsive information. Accordingly, the district may not withhold any of the remaining responsive information under section 552.153 of the Government Code.

We note some of the remaining responsive 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 district must withhold the information we marked under section 552.1101 of the Government Code. To the extent MetLife's customer information is not available on its website, the district must withhold MetLife's customer information and the information we marked under section 552.110(c) of the Government Code. The district must withhold the insurance policy numbers in the remaining responsive information under section 552.136 of the Government Code. The district must release the remaining responsive information; 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 <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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/jm

Ref: ID# 851872

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)