



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2022

Ms. Theda McGrew  
Superintendent Administrative Assistant  
Midlothian Independent School District  
100 Walter Stephenson Road  
Midlothian, Texas 76065

OR2022-22947

Dear Ms. McGrew:

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# 961524 (MISD # 202122-105).

The Midlothian Independent School District (the "district") received a request for the bid tabulation and proposals for Request for Proposal No. 2122-006. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of CDW Government LLP ("CDW-G") and MCA Communication Inc ("MCA"). Accordingly, you state, and provide documentation showing, you notified CDW-G and MCA 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 CDW-G. We have considered the submitted arguments and reviewed the submitted information.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from CDW-G. Thus, we have no basis to conclude MCA has 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 MCA may have in the information.

CDW-G generally argues the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. However, CDW-G has not directed our attention to, and we are not aware of, any law under which any of the information at issue is confidential for the purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, we conclude no portion of the information at issue may be withheld under section 552.101 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.” *See 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.

*Id.* § 552.110(a). Section 552.110(c) of the Government Code states:

- (c) Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

*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). CWD-G argues its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find CWD-G has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked under section 552.110(c) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find CWD-G has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or constitutes commercial or financial information. Therefore, the district may not withhold the remaining information at issue under section 552.110 of the Government Code.

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

(a) Except as provided by Section 552.0222, information 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.

*Id.* § 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). CWD-G asserts disclosure of its information would reveal an individual approach to work, organizational structure, operations, processes, or pricing methodology, and give advantage to a competitor. Upon review, however, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). Additionally, we find CWD-G has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is subject to section 552.1101(a). Therefore, the district may not withhold any of the information at issue under section 552.1101(a) 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.” *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)*. Upon review, we find CWD-G has failed to demonstrate the information at issue consists of access device numbers for purposes of section 552.136.

Accordingly, the district may not withhold any of the remaining information under section 552.136 of the Government Code.

In summary, the district must withhold the information we marked under section 552.110(c). The district must release the submitted 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 the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Cesar Mata  
Attorney  
Open Records Division

CM/mo

Ref: ID# 961524

Enc. Submitted documents

c: Requestor  
(w/o enclosures)