



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 21, 2011

Mr. Mike Leasor  
Abernathy, Roeder, Boyd & Joplin, P.C.  
For Northwest Independent School District  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2011-01044

Dear Mr. Leasor:

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# 406753.

The Northwest Independent School District (the "district"), which you represent, received a request for a specified contract with Cadence McShane Construction ("CMC"). You claim the submitted information is excepted from disclosure under section 552.110. You also state that release of the submitted information may implicate the proprietary interests of CMC. Accordingly, you state you have notified CMC of the request and of the company's right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances).* We have considered the exception you claim and reviewed the submitted information.

We note that 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 requested information relating to it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B).* As of the date of this letter, we have not received arguments from CMC. The district raises section 552.110 of the Government Code for the submitted information. We note that section 552.110 is designed to protect the interests of third parties such as CMC, not the interests of a governmental body. Thus, we do not address the district's arguments under section 552.110. Because we have not received

comments from CMC, we have no basis for concluding that any portion of the submitted information constitutes proprietary information of CMC. *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 district may not withhold any of the submitted information based on the proprietary interests of CMC.

We note that some of the submitted 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. As no further arguments against disclosure have been made, the submitted information must be released, but any information that is protected by 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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 406753

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)