

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

**FILED**  
JAN 10 2023

EDDIE JEAN CARR, CHANCERY CLERK

BY B. Robinson D.C.

IN RE:

MITCHELL BEVERAGE MERIDIAN, INC.'S  
PETITION FOR PROTECTIVE ORDER

ACTION NO. G2023-31 MK

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**PETITION FOR PROTECTIVE ORDER**

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Mitchell Beverage Meridian, Inc. ("Mitchell") petitions the Court, pursuant to the Mississippi Public Records Act of 1983 (the "MPRA"), Miss. Code § 25-61-9, and related laws, for an order protecting from public disclosure certain confidential and proprietary information held by the Mississippi Department of Revenue (the "DOR"). In support of its petition, Mitchell states as follows:

**PARTIES**

1. The Petitioner, Mitchell, is a Mississippi corporation with its principal place of business in Meridian, Mississippi. Mitchell is primarily engaged in the beverage warehousing and distribution business.

2. The Respondent, the DOR, is an agency of the State of Mississippi that may be served with process pursuant to Mississippi Rules of Civil Procedure Rule 4(d) through the Attorney General of the State of Mississippi at 550 High Street, Walter Sillers Building, Suite 1200, Jackson, Mississippi.

**REQUESTING ENTITY**

3. The MPRA requires that "[a]ny party seeking [a] protective order [under the MPRA] shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure." Miss. Code § 25-61-9(1).

4. **Southern Glazer's Leasing, LLC** ("Southern Glazer") is a Florida limited liability company, operating its principal place of business in Florida, and registered to do business in Mississippi. On information and belief, Southern Glazer requested the information this Petition seeks to protect. Accordingly, Mitchell will provide notice of this Petition to Southern Glazer.

### **JURISDICTION, VENUE, AND TIMELINESS**

5. This Court has subject-matter jurisdiction over this case pursuant to Section 159 of the Mississippi Constitution and the MPRA, Miss. Code § 25-61-1 *et seq.*

6. This Court has personal jurisdiction over the parties, as Mitchell willingly submits to the jurisdiction of the Court and the DOR is an agency of the State of Mississippi, operating within the State of Mississippi.

7. Venue is proper in this Court because the records Mitchell seeks to protect from public disclosure are in the possession of the DOR, which is located within the boundaries of Hinds County, Mississippi.

8. This Petition is timely because it is filed within 21 days of December 20, 2022, the date that the DOR notified Mitchell of Southern Glazer's records request.

### **FACTS**

9. On or about October 11, 2022, the DOR issued Request for Proposals No. #3120002542 for Third Party Operation of the Alcoholic Beverage Control Division (the "RFP").<sup>1</sup>

10. Four entities, including Mitchell and Southern Glazer, ultimately submitted proposals in response to the RFP.

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<sup>1</sup> The RFP is publicly available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.dor.ms.gov/sites/default/files/Procurement/RFP%20-%203rd%20Party%20Warehouse%20Operator%2010112022.pdf>

11. Mitchell's sealed proposal submitted in response to the RFP included both a Project Management Proposal and a Technical Proposal; those documents contained Mitchell's confidential and proprietary financial information, sales data, and performance data. *See* Affidavit of John M. Mitchell, Jr., attached hereto as **Exhibit A**.

12. For example, Section 7.3.j of Mitchell's Project Management Proposal contains Mitchell's annual sales for the two most recently completely fiscal years, and Section 7.7 of Mitchell's Project Management Proposal contains Mitchell's comparative audits for years 2020 and 2021. *Id.* Attachment L to Mitchell's Technical Proposal contains a screenshot of Mitchell's proprietary data and analytics concerning the productivity of Mitchell's various warehouses and employees. *Id.*

13. Mitchell disclosed that data and information for the sole purpose of effectively competing for the RFP. *Id.* Otherwise, Mitchell keeps its financial information, sales data, and performance data confidential and out of the public domain. *Id.*

14. On December 9, 2022, the DOR announced its intent to award the work underlying the RFP to Ruan Transport Corporation of Des Moines, IA.<sup>2</sup>

15. Thereafter, an agent of Southern Glazer submitted a public records request to the DOR for "for all proposals submitted by vendors in regards to RFP #3120002542."

16. The DOR notified Mitchell of Southern Glazer's records request on December 20, 2022 by email. *See* Notice, attached hereto as **Exhibit B**.

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<sup>2</sup> The Notice of Intent to Award is publicly available at chrome-extension://efaidnbmnnnibpcajpcgleclefindmkaj/https://www.dor.ms.gov/sites/default/files/Procurement/Public%20Notice%20of%20Intent%20to%20Award%20-%203rd%20Party%20Warehouse%20Op.pdf



**COUNT I: PROTECTIVE ORDER PRECLUDING DISCLOSURE UNDER  
THE MISSISSIPPI PUBLIC RECORDS ACT**

17. Mitchell incorporates and re-asserts the allegations above.

18. The MPRA aims to ensure Mississippi taxpayers can access public records and see how their taxpayer dollars are being spent. *See, e.g.*, Miss. Code Ann. § 25-61-2.

19. But in crafting the MPRA, the Mississippi Legislature weighed that interest against another: the need for private companies working or negotiating with public bodies to protect their confidential information. Indeed, “[t]he fact that, in the course of seeking a business arrangement with a public agency, the business is willing to share . . . confidential information with the agency itself . . . does not mean, necessarily, that the information ought to fall into the hands of the general public.” *Caldwell & Gregory, Inc. v. Univ. of S. Miss.*, 716 So. 2d 1120, 1123 (Miss. Ct. App. 1998).

20. To protect that interest, the MPRA contains explicit exemptions to its presumption of accessibility.

21. One such exemption is for “[r]ecords furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information.” Miss. Code Ann. § 25-61-9(1).

22. Another is for “[c]ommercial and financial information of a proprietary nature required to be submitted to a public body . . . by a firm, business, partnership, association, corporation, individual or other like entity . . . .” Miss. Code Ann. § 79-23-1.

23. When applied, the exemptions and their terms are to be given their “common and ordinarily accepted meaning.” *Caldwell & Gregory, Inc.*, 716 So. 2d at 1123.

24. Applying these exemptions here, Mitchell’s proposal to the RFP is exempt from full disclosure under the MPRA.

25. To compete for the RFP, Mitchell (a third-party business) was required to submit its sealed proposal (a record) to the DOR (a public body).

26. Mitchell's proposal to the RFP contains financial information, sales data, and performance data. *See* Ex. A. Mitchell disclosed those items for the sole purpose of effectively competing for the RFP. *Id.* Otherwise, Mitchell keeps that material confidential and out of the public domain. *Id.*

27. Because of these efforts, Mitchell considers its financial information, sales data, and performance data to be confidential, proprietary, and of material value to its business strategy. *Id.*

28. If Mitchell's financial information, sales data, and performance data were to become public, Mitchell's hard-earned competitive advantage would be lost, as competitors could utilize that information to undercut Mitchell's future bids and to attract Mitchell's existing and potential clients. *Id.*

29. These risks are all too real, as Mitchell's competitor, Southern Glazer, has requested an unredacted copy of Mitchell's proposal to the RFP. Indeed, it is clear that in this case, the records are sought, not for a resident taxpayer to monitor the prudent spending of taxpayer dollars, but for an out-of-state entity to gain an unfair competitive advantage.

30. Mitchell has presented "substantial, credible, and reasonable evidence that disclosing [Mitchell's proposal] . . . would compromise [Mitchell's] ability to offer competitive prices . . . , cripple its ability to negotiate with existing and new customers, and jeopardize" its overall ability to compete in the beverage warehousing and distribution industry. *Gannett River States Pub. Co. v. Entergy Miss., Inc.*, 940 So. 2d 221, 225 (Miss. 2006). This evidence satisfies the MPRA's express exemptions.

31. Accordingly, and to ensure corporate entities do not abuse the MPRA as a way to obtain competitors' confidential and proprietary information, the Court should enter an order that protects Mitchell's proposal to the RFP from full public disclosure.

**PRAYER FOR RELIEF**

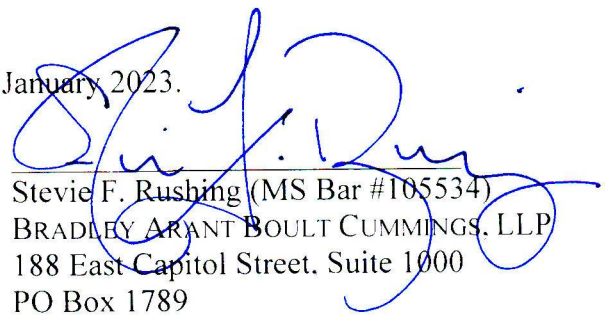
32. Mitchell lacks an adequate remedy at law for the significant damage it will suffer, should the DOR produce Mitchell's proposal to the RFP in full. Because of this threatened and irreparable injury, Mitchell requests the Court, upon hearing or waiver by the DOR, immediately issue a Protective Order pursuant to the MPRA that

- a. precludes public production, in response to the pending records request, as well as future requests, of unredacted copies of Mitchell's proposal to the RFP,
- b. prohibits the DOR from disclosing or releasing any version of Mitchell's proposal to the RFP until Mitchell provides the DOR with a redacted copy of the same, and
- c. orders the DOR to produce only the redacted copy of Mitchell's proposal, as provided by Mitchell, in response to the pending records request, as well as future records requests.

33. Additionally, to the extent possible, Mitchell requests the Court allow this Petition and related proceedings to be expedited so that it takes precedence over other matters on the docket and is set for hearing (if necessary) at the earliest practicable date.

34. Mitchell also requests any other or additional relief the proof establishes or this Court deems just and proper.

Respectfully submitted, this the 10th day of January 2023.



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*Attorney for Petitioner*



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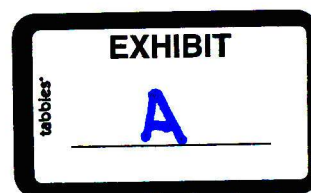
**AFFIDAVIT OF JOHN M. MITCHELL, JR.**

STATE OF MISSISSIPPI

COUNTY OF LAUDERDALE

Comes now the affiant, John M. Mitchell, Jr., and states as follows:

1. My name is John M. Mitchell, Jr. I am Chairman of the Board at Mitchell Beverage Meridian, Inc. ("Mitchell").
2. I am over 21 years of age and competent to give this affidavit. The statements within this affidavit are true and correct to the best of my knowledge and belief. I submit this affidavit in support of Mitchell's Petition for Protective Order.
3. I have personal knowledge of the proposal Mitchell submitted in response to the Mississippi Department of Revenue's Request for Proposals No. RFP #3120002542 for Third Party Operation of the Alcoholic Beverage Control Division (the "RFP").
4. To compete for the RFP, Mitchell prepared a sealed proposal that included both a Project Management Proposal and a Technical Proposal. Those proposals contained Mitchell's confidential and proprietary financial information, sales data, and performance data, specifically in Sections 7.3.j and 7.7 of Mitchell's Project Management Proposal and Attachment L to Mitchell's Technical Proposal.



5. Mitchell invested significant resources in creating, compiling, and tailoring this data and information to craft a proposal that demonstrated Mitchell's unique ideas, capabilities, and experience.

6. Section 7.3.j of Mitchell's Project Management Proposal contains Mitchell's annual sales for the two most recently completely fiscal years. This information was a required to be submitted, per the RFP.

7. Section 7.7 of Mitchell's Project Management Proposal contains Mitchell's comparative audits for years 2020 and 2021. This information was a required to be submitted, per the RFP.

8. Attachment L to Mitchell's Technical Proposal contains a screenshot of Mitchell's confidential and proprietary performance data. This screenshot shows a reporting system reflecting data concerning Mitchell's sales, inventory availability, picking, loading, and delivery. It also reflects an analysis of that data by way of productivity reports tailored to specific employees, warehouses, and products. Mitchell included Attachment L in its proposal to demonstrate Mitchell's belief that it offers best-in-class reporting of key performance indicators.

9. Mitchell disclosed the data and information in Section 7.3.j, Section 7.7, and Attachment L for the sole purpose of effectively competing for the RFP. Otherwise, Mitchell keeps its financial information, sales data, and performance data confidential and out of the public domain.

10. Because of those efforts, the information contained in Section 7.3.j, Section 7.7, and Attachment L cannot be easily recreated or duplicated by others. For that reason, Mitchell considers its financial information, sales data, and performance data to be confidential, proprietary, and of material value to its business strategy.



11. Public disclosure of Mitchell's confidential and proprietary information would risk the loss of a significant investment of time, effort, and expense. Further, public disclosure would place Mitchell at a competitive disadvantage when negotiating for future work, both in the state of Mississippi and elsewhere in the United States. For example, if a competitor obtained Mitchell's financial information, sales data, and performance data, it could capitalize on it to undercut Mitchell's future bids and to attract Mitchell's existing and potential clients.

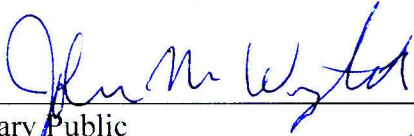
12. I do swear and affirm that the foregoing is true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
John M. Mitchell, Jr.

**SWORN** to and **SUBSCRIBED** before me on this the 6<sup>th</sup> day of January 2023.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 3/18/24

From: **David Caldwell** <[David.Caldwell@dor.ms.gov](mailto:David.Caldwell@dor.ms.gov)>

Date: Tue, Dec 20, 2022 at 4:01 PM

Subject: Public Records Request

To: [adam@mitchellcompanies.com](mailto:adam@mitchellcompanies.com) <[adam@mitchellcompanies.com](mailto:adam@mitchellcompanies.com)>, [landry.adkins@mitchellcompanies.com](mailto:landry.adkins@mitchellcompanies.com) <[landry.adkins@mitchellcompanies.com](mailto:landry.adkins@mitchellcompanies.com)>

Cc: Kellye Gray <[Kellye.Gray@dor.ms.gov](mailto:Kellye.Gray@dor.ms.gov)>

The Department has received a public records request from Southern Glazer for all proposals submitted by vendors in regards to RFP #3120002542.

Pursuant to Mississippi Code Section 25-61-9, if you believe any portion of your proposal contains trade secrets or contains confidential information not subject to production, you are required to seek a court order restraining the production of such information within 21 days of this e-mail. The Department is currently communicating with Southern Glazer to determine if there are any portions of the proposals (for example, financial information) that it will voluntarily agree to exclude from production. If Southern Glazer chooses to modify its request to specifically exclude information, the Department will update you.

The Department is required to respond to the request within 7 working days of receipt. Therefore, we would appreciate it if you would communicate any intention to seek a court order no later than December 23, 2022. If no order is sought within 21 days, the Department will produce the proposal as received during the procurement process without redaction.

Further, if you do not object to producing a copy of your company's proposal without redaction, I ask that you respond accordingly to me so that the Department may move forward with producing the requested proposal. Separate notification is being sent to each vendor who submitted a proposal.

David Caldwell

Senior Attorney

Mississippi Department of Revenue

601-923-7412

