



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Ms. Rebecca Bradley
Counsel for the Plano Independent School District
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75070-1210

OR2019-00470

Dear Ms. Bradley:

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# 745151 (Ref. No. 645).

The Plano Independent School District (the "district"), which you represent, received a request for pricing information pertaining to six specified contract renewals. You state the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Borden Dairy Company ("Borden"); Coca-Cola Southwest Beverages LLC ("Coca-Cola"); Kurz & Co.; Labatt Food Service ("Labatt"); Parks Coffee; and Dr. Pepper. Accordingly, you state, and provide documentation showing, you notified these 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 Coca-Cola and Labatt.¹ We have considered the submitted arguments and reviewed the submitted information.

¹We have also received comments from Borden stating it does not object to the release of its information.

Initially, we note the requestor only seeks pricing information pertaining to the specified contract renewals. Accordingly, any additional submitted information is not responsive to the present request for information. 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.

You assert the submitted responsive information is excepted from disclosure under section 552.110 of the Government Code. However, we note section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Accordingly, we do not consider your argument under section 552.110. 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining interested third parties explaining why their information should not be released. Therefore, we have no basis to conclude any remaining interested third party has a protected proprietary interest in the submitted responsive information. *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 responsive information on the basis of any proprietary interest any remaining interested third parties may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 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). A private third party may invoke section 552.104(a) of the Government Code. *Id.* at 833. Coca-Cola and Labatt assert their information at issue is excepted from disclosure under section 552.104 of the Government Code. Coca-Cola and Labatt state they have competitors. In addition, Coca-Cola and Labatt state the release of the information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Coca-Cola and Labatt have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information at issue, which we have marked, under section 552.104(a) of the Government

Code.² You argue release of the remaining responsive information would harm the remaining interested third parties by giving an advantage to their respective competitors. However, such an interest in protecting the information belongs to these third parties and not the district. Therefore, the district may not withhold any of the remaining responsive information under section 552.104(a) on this basis. As no further exceptions to disclosure are raised, the district must release the remaining responsive 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 745151

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.