



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 23, 2019

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

OR2019-36417

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# 803902 (ORR# W000816).

The Plano Independent School District (the "district"), which you represent, received a request for bid tabulations and pricing information related to several specified requests for proposals. The district states it is releasing some of the requested information. The district claims the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Coca-Cola Southwest Beverages, L.L.C. ("Coca-Cola"), Dr. Pepper; Klement Distribution; Labatt Food Service ("Labatt"); Parks Coffee; Kurz & Co.; and Borden Dairy. Accordingly, the district states, and provides documentation showing, it notified the third parties of the request for information and of the 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 received comments from Coca-Cola and Labatt. We have reviewed the submitted arguments and the submitted information.

Initially, we note the requestor only seeks bid tabulation and pricing information pertaining to the specified requests for proposals. Accordingly, any remaining 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.

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 (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 responsive information 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 their responsive information would provide an advantage to their competitors. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. 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 Coca-Cola’s and Labatt’s responsive information under section 552.104(a) of the Government Code.¹ The district argues 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 the remaining third parties and not to the district. Therefore, the district may not withhold any of the remaining responsive information under section 552.104(a) on this basis.

Next, the district contends the remaining responsive information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the district’s arguments under section 552.110.

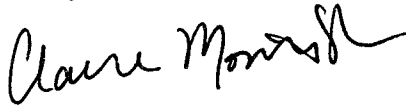
¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

In summary, the district may withhold Coca-Cola's and Labatt's responsive information under section 552.104(a) of the Government Code. 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 <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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 803902

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)