



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 27, 2020

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2901

OR2020-11925

Dear Ms. Tynan:

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# 824328 (OGC# 195235).

The University of Texas at Austin (the "university") received a request for all contracts and amendments with two specified entities or other companies providing certain types of services, as well as information pertaining to the cancellation of such contracts. You state the university does not have information responsive to portions of the request.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: Coca-Cola Enterprises, Inc., Coca-Cola Refreshments USA, Inc., Coca-Cola Bottling Company of Austin, and Coca-Cola Southwest Beverages, LLC (collectively, "Coca-Cola"); and Pepsi Beverages Company and PepsiCo Foodservice (collectively, "Pepsi"). Accordingly, you state, and provide documentation demonstrating, the university notified the interested 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 Pepsi.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We have also received comments from Compass Group USA, Inc. (“Compass”). We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Coca-Cola explaining why the information at issue should not be released. Thus, we have no basis to conclude Coca-Cola has a protected proprietary interest in the information at issue. *See id.* § 552.110. Therefore, the university may not withhold any portion of the submitted information on the basis of any proprietary interest Coca-Cola may have in it.

Next, we note Compass argues against the release of information the university has not submitted to this office for our review. This ruling does not address arguments against disclosure of information that was not submitted by the university and is limited to the information the university has submitted for our review.<sup>2</sup> *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 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). After review of the information at issue and consideration of the arguments, we find the university has failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the university may not withhold any portion of the submitted information under section 552.104(a) of the Government Code.

Pepsi asserts portions of its information at issue are excepted from disclosure under section 552.110(c) of the Government Code.<sup>3</sup> Section 552.110(c) of the Government Code states:

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].

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<sup>2</sup> As we are able to make this determination, we need not address Compass’s arguments against disclosure of this information.

<sup>3</sup> Although Pepsi cites to section 552.110(b) of the Government Code, we understand it to raise section 552.110(c) of the Government Code based on the substance of its arguments.

Gov't Code § 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). Pepsi asserts some of its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Pepsi has demonstrated portions of its information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code. However, we find the remaining information at issue includes information subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find Pepsi has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any portion of the remaining information under section 552.110(c) of the Government Code. The university must release the remaining 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/eb

Ref: ID# 824328

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 8 Third Parties  
(w/o enclosures)