



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2022

Ms. Nelly R. Herrera
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2022-22337

Dear Ms. Herrera:

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# 962059 (File No. 22-0605).

Sam Houston State University (the "university") received a request for proposals related to specified requests for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Coca-Cola Southwest Beverages LLC ("Coca-Cola"). Accordingly, you state, and provide documentation demonstrating, you notified Coca-Cola of the request for information and of its 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. We have considered the submitted arguments and reviewed the submitted information.

Coca-Cola raises section 552.110 of the Government Code for the information at issue. Section 552.110(b) states, "information is excepted from [required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See* Gov't Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code provides, “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[.]’” *Id.* § 552.110(c). Upon review, we find Coca-Cola has failed to provide specific factual evidence demonstrating any portion of the information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Further, we find Coca-Cola has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret. Therefore, the university may not withhold any portion of the submitted information under section 552.110 of the Government Code.

Coca-Cola raises section 552.1101(a) of the Government Code for the information at issue. Section 552.1101(a) of the Government Code provides:

[I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). Upon review, we find Coca-Cola has failed to provide specific factual evidence demonstrating any portion of the information at issue is subject to section

552.1101(a). Therefore, the university may not withhold any portion of the submitted information under section 552.1101(a) of the Government Code. As no further exceptions to disclosure have been raised, the university must release the submitted 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 962059

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)