OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 8, 2003

Mr. Steven T. Ramos
Strasburger & Price, L.L.P.
901 Main Street, Suite 4300
Dallas, Texas 75202-3794

OR2003-0153

Dear Mr. Ramos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174798.

The Rockwall Independent School District (the "district"), which you represent, received a request for "1. Any contract providing exclusive rights to sell soft drinks in the [district]. 2. All amounts (capital and otherwise) expended by [the district] on the construction and maintenance of the covered athletic practice facility. 3. Salary of the head football coach and salary of the Rockwall High School principal." You indicate that you have released information responsive to items 2 and 3 of the request. You state that the requested contract may be confidential under provisions of the Public Information Act (the "Act"), but make no arguments and take no position as to whether the information is excepted from public disclosure. You inform this office and provide documentation showing that you have notified Austin Coca-Cola Bottling Company and Coca-Cola Enterprises Inc. (collectively, "Coca-Cola"), the interested third party whose proprietary interests may be implicated by the request, of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

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, Coca-Cola has not submitted to this office its reasons explaining why its information should not be released. Therefore, Coca-Cola has provided us no basis to conclude that the submitted information is excepted from disclosure under section 552.110 or is otherwise confidential. *See e.g.,* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Consequently, the submitted contract must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

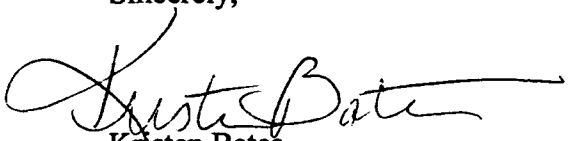
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 174798

Enc. Submitted documents

c: Mr. Socorro Hettinger
3902 Ridgecrest Avenue
Rowlett, Texas 75088-5572
(w/o enclosures)

Austin Coca-Cola Bottling Company
dba Coca-Cola Bottling Company of North Texas
Attn: Regional Vice President-General Manager
6011 Lemmon Avenue
Dallas, Texas 75209
(w/o enclosures)

Coca-Cola Enterprises, Inc.
Attn: General Counsel
P.O. Drawer 1778
Atlanta, Georgia 30313
(w/o enclosures)