



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2013

Mr. Damon C. Derrick  
General Counsel  
Stephen F. Austin State University  
P.O. Box 13065 SFA Station  
Nacogdoches, Texas 75962-3065

OR2013-18726

Dear Mr. Derrick:

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# 504000.

The Stephen F. Austin State University (the "university") received a request for information pertaining to The Coca-Cola Company's affiliation with and sale of beverages to the university. You state the university has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of this information may implicate the proprietary interests of Nacogdoches Coca-Cola Bottling Company, Inc. ("Coca-Cola"). Accordingly, you state you notified Coca-Cola of the request for information and of its right to submit arguments to this office as to why the information at issue 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). As of the date of this letter, we have not received comments from Coca-Cola. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open

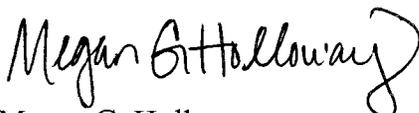
Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You inform us the university is currently negotiating the renewal of the exclusive beverage sponsorship contract between the university and Coca-Cola. You explain as of the date of the request for information, contract negotiations were still underway between the university and Coca-Cola. Further, you state that if the contract negotiations fail, release of the information at issue would be to the university's detriment because it would provide other potential vendors with advance knowledge of Coca-Cola's capabilities and plans and harm the university's interests in this particular competitive situation. Based on your representations, we conclude the university may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation).

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](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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/dls

Ref: ID# 504000

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Coca-Cola  
c/o Mr. Damon C. Derrick  
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