



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 13, 2015

Mr. Jerry Sorrells  
Coordinator of Open Records Management  
Texas State Technical College  
3801 Campus Drive  
Waco, Texas 76705-1696

OR2015-16715

Dear Mr. Sorrells:

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# 575403 (Request No. 145280).

Texas State Technical College (the "college") received a request for information regarding Waco Coca-Cola ("WCC") and M&M Vending ("M&M"), including declared revenues and commissions paid to the college for the past three years, the existing contracts with these companies, and pricing information. You indicate the college does not have information responsive to a portion of the request for information.<sup>1</sup> Although we understand you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified WCC and M&M 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

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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 or to create responsive information. *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).

in certain circumstances). We have received comments from M&M. We have considered the submitted arguments and reviewed the submitted information.<sup>2</sup>

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 WCC explaining why its information should not be released. Therefore, we have no basis to conclude WCC has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the college may not withhold any of the information at issue on the basis of any proprietary interest WCC may have in it.

Next, we note M&M argues against the release of information that was not submitted by the college. This ruling does not address information that was not submitted by the college and is limited to the information the college has submitted for our review. *See* Gov't Code § 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, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex. June 19, 2015). 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." *Id.* at \*9. M&M states release of some of its information, consisting of its items for sale, prices the items are sold at, and commissions paid to the college for these items, would give its competitors an advantage in future bids by allowing them to undercut M&M's proposal. After review of the information at issue and consideration of the arguments, we find M&M has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude college may withhold the information at issue, which we have marked, under section 552.104(a).

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<sup>2</sup>We note the college did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nevertheless, because the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will whether the submitted information is excepted based on those interests. *See id.* §§ 552.007, .302, .352.

In summary, the college may withhold the information we have marked under section 552.104(a) of the Government Code. The college 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 [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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 575403

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Waco Coca Cola  
2701 Texas Central Parkway  
Waco, Texas 76712  
(w/o enclosures)

Mr. Michael R. Mahan  
Owner  
M & M Vending  
5902 East Veterans Memorial Boulevard  
Killeen, Texas 76543  
(w/o enclosures)