



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2016

Ms. Nancy Nelson
Associate Vice President for Employee Relations
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998-0500

OR2016-00140

Dear Ms. Nelson:

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# 594939.

The El Paso Community College District (the "district") received a request for sales volume numbers related to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. In addition, you state release of this information may implicate the proprietary interests of Pepsi Bottling Group, LLC ("Pepsi"). Accordingly, you state, and provide documentation showing, you notified Pepsi 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 considered the exceptions you claim and reviewed the submitted information.

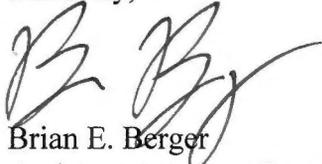
Initially, we note the requestor seeks only the sales volume numbers related to the specified request for proposals. You have submitted documents that contain information beyond this specific information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release that information in response to the request.

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 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 (Tex. 2015). You represent the information pertains to a competitive bidding situation. In addition, you state the contract has not been awarded and release of the information would give advantage to a competitor or bidder in the event rebidding were to occur. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the responsive information under section 552.104(a) of the Government Code.¹

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, 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/bw

Ref: ID# 594939

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your other argument to withhold this information.

Michael Muela
Pepsi Bottling Group, LLC
Key Account Manager
10841 Pellicano
El Paso, TX, 79935
(w/o enclosures)