



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 14, 1997

Ms. Renee Vaughn
Associate General Counsel
Texas Tech University
Office of Vice Chancellor and General Counsel
P. O. Box 42021
Lubbock, Texas 79409-2021

OR97-1592

Dear Ms. Vaughn:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107095.

Texas Tech University (the "University") received a request for "copies of contracts and memos" between the University and Southwest Coca-Cola Bottling Company ("Coca-Cola"), "including vending machines sales and sales at campus venues." You note that certain information that was submitted to the University constitutes Coca-Cola's "Proprietary Statement."¹ You have submitted for our review some of the information at issue, and ask whether the memoranda are excepted under section 552.111 and whether Coca-Cola's claimed proprietary information is excepted from required public disclosure under section 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address whether the information Coca-Cola has claimed to be proprietary is excepted from disclosure under section 552.110 of the Government Code. You claim that Coca-Cola states the requested "information is the exclusive property of, and not available for reproduction without the prior written consent of the bottling company." You inform our office that because "of Coca-Cola's position, the University will decline to release the information until an opinion is provided." We note that section 552.301(b)(3) requires that a governmental body must submit to this office a copy of the specific information requested

¹We note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

or representative samples of the information if a voluminous amount of information was requested. *See generally* Gov't Code §§ 552.301(b)(3)-.303. Responsive documents or representative samples of responsive documents are required because "[i]n order to determine whether information is subject to a particular exception, this office ordinarily must review the information." Open Records Decision No. 497 (1988) at 4.

Since the property and privacy rights of a third party are implicated by the release of the requested information, we notified Coca-Cola of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 Open Records Act in certain circumstances). However, Coca-Cola neither responded to our notification pursuant to section 552.305, nor submitted the requested records.²

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In this instance, neither the University nor Coca-Cola has provided us with written comments explaining how section 552.110 may apply to the information at issue, and, therefore, we have no basis upon which to pronounce the information protected by section 552.110. *See* Open Records Decision Nos. 363 (1983) (third party duty to establish how and why exception protects particular information), 402 (1983) (this office cannot conclude that information is trade secret unless governmental body or third-party has provided evidence of factors necessary to establish trade secret claim). Consequently, we do not believe that the University or Coca-Cola has demonstrated that the requested information constitutes information protected by section 552.110.

We next address whether section 552.111 allows the University to withhold any of the submitted information. The University objects to the public release of memoranda which contain the advice, opinions, and recommendations of University personnel on the issue of vending products. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

²In your letter to this office, you indicated that Coca-Cola "will supply the document in question."

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 (1993) at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). We agree that portions of the requested information contain advice, opinions and recommendations reflecting the University's policy-making; however, we also note that some of the information pertains to internal administrative matters. We have marked those portions of the memoranda that the University may withhold pursuant to section 552.111. The remaining portions of these documents must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 107095

Enclosures: Marked documents

cc: Ms. Ginger Pope
The University Daily
Texas Tech University
Box 3081
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(w/o enclosures)

³We assume that the University will release the remaining requested information for which an exception has not been claimed.

Mr. Wade Richardson
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(w/o enclosures)