



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1998

Mr. David Méndez
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-0448

Dear Mr. Méndez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 112700.

The Austin Independent School District (the "district"), which you represent, received a request for the following information: 1) copies of all agreements which the district has with Coca-Cola Enterprises, Inc. ("Coca Cola"); 2) copies of all correspondence between the district and or Dr. James Fox referencing business transactions between the district and Coca-Cola to provide products and services to district schools; and 3) copies of any and all inquiries made by the public regarding relationships between the district and Coca-Cola. You claim that the submitted information is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the documents submitted.

Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). Governmental bodies may withhold bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

You inform us that the district "is in the process of negotiating agreements for service with certain third party vendors of beverages through automated vending machines at campuses in the District including, Austin Coca Cola Bottling Company. Those negotiations are ongoing as of the date of this letter. . . ." You assert that the documents you have provided, Bates Nos. 1 through 128, are documents the district considers to be responsive to the request, and that release of these

documents "would seriously affect the District's negotiating posture with the vendors." Upon review of the information with Bates Nos. 1 through 128, we conclude the district may withhold this information under section 552.104 at this time. As we resolve your request concerning this information under section 552.104, we need not address your arguments or those of Coca-Cola under section 552.110 for this information.

We also note that originally, you informed this office that information responsive to the first category of the request, copies of all agreements which the district has with Coca-Cola, would be released to the requestor. In a subsequent letter, you informed us that Coca Cola wished to assert a privilege as to portions of those documents under section 552.110. Pursuant to section 552.305 of the Government Code, this office informed Coca Cola of the request and of their opportunity to submit to this office their arguments as to why any claimed exceptions to disclosure apply to their information. Coca Cola responded by arguing that portions of the information with Bates Nos. 1 through 128 are excepted as trade secrets or under section 552.104. They did not, however, submit arguments with regard to the agreements between the district and Coca Cola which you submitted to this office. Therefore, we have no basis upon which to conclude that this information is excepted from disclosure, and it therefore must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref: ID# 112700

Enclosures: Submitted documents

cc: Mr. Kcevin Rob
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(w/o enclosures)