



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2013

Ms. Lindsey F. Bartula  
Assistant General Counsel  
Office of General Counsel  
University of North Texas  
1155 Union Circle, #310907  
Denton, Texas 76203

OR2013-18814

Dear Ms. Bartula:

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# 503965 (UNT PIR No. 002119)

The University of North Texas (the "university") received a request for proposals, contracts, and amendments submitted to the university by a named company or its affiliates during a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Additionally, although the university takes no position with respect to the remaining requested information, you state its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the university notified the Coca-Cola Company ("Coke") of the request for information and of its right to submit arguments stating why its information should not be released. *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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from

disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Coke explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any of the submitted information would implicate the interests of Coke, and none of the submitted information may be withheld on that basis. *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.

We understand the university to contend portions of the submitted information, consisting of the sponsorship fees you have marked, should be withheld under section 552.101 of the Government Code because the university agreed to keep the marked information "confidential." Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, the university has not pointed to any statutory confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the university may not withhold the information at issue under section 552.101 of the Government Code. Further, we note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 Government Code). Consequently, unless the information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary. As no other exceptions to disclosure have been raised, the university must release the submitted 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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 503965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

The Coca Cola Company  
Attn: Director - U.S. Educational Channel  
One Coca Cola Plaza  
Atlanta, Georgia 30313  
(w/o enclosures)