



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2017

Ms. Jessica Vu
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott
P.O. Box 12428
Austin, Texas 78711

OR2017-02577

Dear Ms. Vu:

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# 644597 (OOG ID# 16-369).

The Office of the Governor (the "governor's office") received a request for five categories of information related to a specified RFP. Although you take no position as to whether the requested information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of a specified third party. Accordingly, you state, and provide documentation demonstrating, you notified Texas Monthly of the request for information and of its right to submit arguments to this office as to why the information at issue 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 received comments from Texas Monthly. We have considered the submitted arguments and reviewed the submitted information.

We note Texas Monthly seeks to withhold information not submitted to this office by the governor's office. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the governor's office, this ruling does not address this information and is limited to the remaining information submitted as responsive by the governor's office.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 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 841. Texas Monthly states it has competitors. In addition, Texas Monthly states release of the information it has indicated would give advantage to its competitors and seeks to withhold the terms of the contract. After review of the information at issue and consideration of the arguments, we find Texas Monthly has established the release of the information we marked would give advantage to a competitor or bidder. Thus, we conclude governor's office may withhold the information we marked under section 552.104(a) of the Government Code. The governor's office 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, 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/sb

Ref: ID# 644597

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)