



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2017

Ms. Jessica Vu
Assistant General Counsel
Office of the Governor Greg Abbott
Post Office Box 12428
Austin, Texas 78711

OR2017-05904

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# 652218 (ORR# 17-018).

The Office of the Governor (the "governor's office") received a request for Texas Enterprise Zone applications for Denbury Onshore, L.L.C. ("Denbury") for a specified time period. You state the governor's office is withholding access device numbers pursuant to section 552.136(c) of the Government Code.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Denbury. Accordingly, you state, and provide documentation showing, you notified Denbury 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 received comments from Denbury. We have reviewed the submitted information and the submitted arguments.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 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

¹Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Denbury states it has competitors. In addition, Denbury states release of portions of its information, which Denbury has indicated, would cause harm to Denbury and provide an advantage to its competitors, who could use the information to recruit Denbury's employees and to undercut Denbury in future negotiations. After review of the information at issue and consideration of the arguments, we find Denbury has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the governor's office may withhold the information Denbury indicated under section 552.104(a) of the Government Code.² 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/nmd

Ref: ID# 652218

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.