



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2017

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

OR2017-16230

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# 668343 (Ref. No. 17-176).

The Office of the Governor (the "governor's office") received a request for the governor's travel schedule during a specified time period. You state you are releasing most of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-08718 (2017). In that ruling, we determined the governor's office may withhold the marked information under section 552.104 of the Government Code and must release the remaining information. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the governor's office may continue to rely on Open Records Letter No. 2017-08718 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law,

facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.104 of the Government Code exempts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You argue expansion and recruitment of businesses to the State of Texas is a competitive process and you inform us the governor’s office “works tirelessly to promote Texas, in part by providing state resources to encourage business growth within the state.” You state “Texas devotes substantial resources to programs designed primarily to attract new businesses to the state or assist with the substantial expansion of an existing business as part of competitive recruitment.” You explain the governor’s office is currently negotiating potential approvals or contracts with the businesses at issue, and contracts with these businesses have not been executed. You argue release of this information, before contracts are signed or final approval given, would disadvantage Texas by permitting other states to directly approach these businesses and their representatives with competing incentives. Based on your representations and our review, we find you have demonstrated the governor’s office has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of the information you have marked would give advantage to a competitor or bidder. Accordingly, the governor’s office may withhold the information you have marked under section 552.104 of the Government Code.

In summary, the governor’s office may continue to rely on Open Records Letter No. 2017-08718 as a previous determination and withhold or release the information at issue in accordance with that ruling. The governor’s office may withhold the information you have marked under section 552.104 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,

A handwritten signature in black ink, appearing to read 'MLC', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 668343

Enc. Submitted documents

c: Requestor
(w/o enclosures)