



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 12, 2017

Ms. Jessica Vu  
Ms. Diane Morris  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2017-18429A

Dear Ms. Vu and Ms. Morris:

This office issued Open Records Letter No. 2017-18429 (2017) on August 14, 2017. Since that date, we have determined we made an error. Correspondence from Space Exploration Technologies Corp. ("SpaceX") regarding OOG ID# 17-213 was inadvertently attached to this ruling, which pertains to OOG ID# 17-232 and 17-270. Where this office determines an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on August 14, 2017. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 673988 (OOG ID# 17-232 & 17-270).

The Office of the Governor (the "governor's office") received two requests for information pertaining to SpaceX. You state the governor's office will redact access device numbers and bank account numbers under section 552.136(c) of the Government Code, and e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).<sup>1</sup> Although you take no position

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<sup>1</sup>Section 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). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of SpaceX. Accordingly, you state, and provide documentation showing, the governor's office notified SpaceX 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 SpaceX. We have considered the submitted arguments and reviewed the submitted information.

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. SpaceX states it has competitors. In addition, SpaceX states the release of its information at issue would give its competitors an advantage in developing more competitive bids on future launch service contracts by allowing its competitors to underbid SpaceX in future bidding situations. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d 831, at 831, 842. After review of the information at issue and consideration of the arguments, we find SpaceX has established the release of the information at issue, which we marked, would give advantage to a competitor or bidder.<sup>2</sup> Thus, we conclude the governor's office may withhold the information we have marked under section 552.104(a) of the Government Code.

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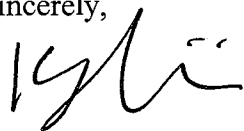
<sup>2</sup>We note SpaceX seeks to withhold bank account and routing numbers. As noted above, the governor's office states it will redact access device numbers and bank account numbers under section 552.136(c) of the Government Code. *See* Gov't Code § 552.136(c). Accordingly, we do not address SpaceX's argument against disclosure of this information.

In summary, the 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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 673988

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

1 Third Party  
(w/o enclosures)