



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2017

Ms. Diane Morris
Deputy General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2017-26487

Dear Ms. Morris:

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# 684862 (OOG ID# 17-305).

The Office of the Governor (the "governor's office") received a request for information from a specified time period pertaining to potential economic development assistance from the State of Texas for named companies.¹ You claim the requested information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state you notified interested third parties of the request for information and of their rights to submit arguments to this office. *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 an interested third party. We have considered 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). The

¹You state, and provide documentation demonstrating, the governor's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbot*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

“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.” 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(a). The instant request specifically seeks information pertaining to potential economic development assistance from the State of Texas for the named companies. You assert release of any information responsive to the instant request would tend to confirm or deny whether the governor’s office is negotiating with the named companies. Further, you argue release of any such responsive information would undermine the ability of the State of Texas to successfully recruit businesses and would provide an advantage to a competitor. Upon review of your submitted arguments, we find you have demonstrated responding to this request would give an advantage to a competitor or bidder for the purposes of section 552.104(a). Accordingly, to the extent the governor’s office maintains information responsive to the request, the governor’s office may withhold such information under section 552.104(a).

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 684862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)