



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2017

Mr. James Person
Assistant General Counsel
The Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2017-27160

Dear Mr. Person:

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# 685798 (OOG ID# 17-332).

The Office of the Governor (the "governor's office") received a request for a named individual's schedule during specified time periods. You state you will release some information to the requestor. You also state you will redact some information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.106, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 most of the information you have marked would give advantage to a competitor or bidder. Accordingly, with the exception of the information we have marked for release, the governor’s office may withhold the information you have marked under section 552.104 of the Government Code. However, we find you have failed to demonstrate release of the remaining information at issue would give advantage to a competitor or bidder. Accordingly, the governor’s office may not withhold any portion of the remaining information under section 552.104 of the Government Code.

Section 552.106(a) of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. Therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.*

You state the information you have marked includes bill analyses prepared by governor’s office employees for the purpose of evaluating proposed legislation. You further state this information reflects “priorities, strengths, and weaknesses that [governor’s office] staff have accorded to different bills.” Upon review, we find the information you have marked consists of advice, opinion, analysis, and recommendations regarding proposed legislation.

Therefore, the governor's office may withhold the information you have marked under section 552.106 of the Government Code.³

In summary, with the exception of the information we have marked for release, the governor's office may withhold the information you have marked under section 552.104 of the Government Code and the information you have marked under section 552.106 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 685798

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.