



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 2, 2018

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

OR2018-00096

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# 689637 (OOG ID# 17-364).

The Office of the Governor (the "OOG") received a request for all e-mail communications that were sent to or received from specified domains during a certain time period. You state the OOG will release some information to the requestor. You claim 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 representative sample of information.<sup>1</sup>

Section 552.104 of the Government Code excepts 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 assert the OOG has specific marketplace interests in the information at issue. You explain the OOG "works

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<sup>1</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

tirelessly to promote Texas, in part by providing state resources to encourage business growth within the state.” Additionally, you explain, “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 inform us the business at issue is considering expansion to Texas and “is under consideration as [a] potential economic development incentive recipient by the OOG.” Further, you inform us “[a]ny approvals by the OOG or economic incentive contracts pertaining to this business have not been finalized.” You argue release of this information, before contracts are signed or final approval given, would disadvantage Texas by permitting other states to directly approach this business and its representatives with competing incentives. Upon review, we find you have demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, the OOG may withhold the submitted information under section 552.104 of the Government Code.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 689637

Enc. Submitted documents

c: Requestor  
(w/o enclosures)