



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2018

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

OR2018-04306

Dear Mr. Moreland:

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# 697701 (OOG ID#: 431-17).

The Office of the Governor (the "governor's office") received a request for eighteen categories of information pertaining to Texas Enterprise Zone Projects that were approved or denied for the September 1, 2017 application round. The governor's office states it is releasing some information to the requestor. The governor's office claims a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the governor's office's claimed exception and reviewed the submitted information.

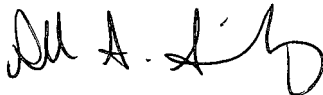
Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The governor's office argues expansion and recruitment of businesses to the State of Texas is a competitive process and informs us it "works tirelessly to promote Texas, in part by providing state resources to encourage business growth within the state." The governor's office states "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." The governor's office explains "[a]lthough the project relating to [a certain

business] was approved for the incentive program at issue, the same project is under consideration as a recipient of other potential economic incentives.” Further the governor’s office states it “is currently negotiating a potential approval with the business at issue, and approvals and contracts pertaining to this business and this other incentive program have not been finalized.” The governor’s office argues release of this information, before negotiations are finalized, would disadvantage Texas by permitting other states to directly approach this company with competing offers or incentives. Based on the governor’s office’s representations and our review, we find the governor’s office has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the governor’s office has demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, the governor’s office may withhold the information it 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, 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 697701

Enc. Submitted documents

c: Requestor
(w/o enclosures)