



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 28, 2019

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

OR2019-02408

Dear Mr. Behnke:

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# 747840 (OOG ID# 420-18).

The Office of the Governor (the "governor's office") received a request for a specified grant application. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Sterling Lumber Company, LLC ("Sterling"). Accordingly, you state, and provide documentation showing, the governor's office notified Sterling of the request for information and of the 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 Sterling. We have reviewed the submitted arguments and the submitted information.

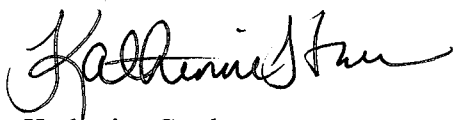
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The governor's office asserts it has specific marketplace interests in the information at issue. The governor's office explains it "works tirelessly to promote Texas, in part by providing state resources to encourage business

growth within the state.” Additionally, the governor’s office explains it employs programs designed to attract new businesses to the state and facilitate economic development. The governor’s office informs us the business at issue is considering expansion to Texas and, “although the applicant has been chosen to receive the incentive at issue, the contract related to the incentive has not yet been finalized.” The governor’s office argues release of this information, before the contract is signed or final approval given, would disadvantage Texas by permitting other states to directly approach this business and its representatives with competing incentives. After review of the information at issue and consideration of the arguments, we find the governor’s office has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the governor’s office may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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,



Katherine Stark  
Attorney  
Open Records Division

KS/mo

Ref: ID# 747840

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.