



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2019

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

OR2019-03820

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# 749780 (Reference Nos. 423-18, 431-18, and 452-18).

The Office of the Governor (the "governor's office") received three requests from separate requestors for information relating to the Amazon second headquarters project.¹ You claim some of the requested information is subject to previous determinations by our office. You also claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹You state, and provide documentation demonstrating, the governor's office sought and received clarification of the information requested by the first requestor. *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. Abbott*, 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).

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 that those records contain substantially different types of information than that submitted to this office.

Initially, you inform us some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-00960 (2018) and 2018-22006 (2018). In those rulings, we determined the governor's office may withhold the submitted information under section 552.104(a) of the Government Code. However, you inform us the negotiations at issue in those rulings have concluded since the dates the previous rulings were issued. Additionally, we note some of the information at issue was created after the dates the previous rulings were issued. Thus, we note the facts and circumstances have changed with respect to the information at issue since Open Records Letter Nos. 2018-00960 and 2018-22006 were issued to the governor's office. Therefore, the governor's office may not rely on Open Records Letter Nos. 2018-00960 and 2018-22006 as previous determinations in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments against disclosure of the information at issue.

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, 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 expansion of an existing business as part of competitive recruitment." You explain the governor's office "employs similar approaches, strategies, and methods on a recurring basis to evaluate and recruit potential [economic development incentive] recipients." You assert the governor's office has specific marketplace interests in the information at issue because Texas is competing with other states in recruiting and retaining businesses in the state. You argue release of the information at issue would provide a competitive advantage to other states competing with Texas in the business expansion and recruitment marketplace. Based upon 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 the submitted information would give advantage to a competitor or bidder. Accordingly, the governor's office may withhold the submitted information under section 552.104(a) of the Government Code.³

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



James M. Graham
Assistant Attorney General
Open Records Division

JMG/som

Ref: ID# 749780

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)