



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 20, 2019

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

OR2019-04727

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# 751408 (OOG ID# 450-18).

The Office of the Governor (the "governor's office") received a request for information pertaining to incentives made to three named companies. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Impact DataSource ("Impact") and PGA of America. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 Impact. We have considered the submitted arguments and reviewed 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). You state the governor's office has specific

marketplace interests in the submitted information because the State of Texas is competing with other states in the business expansion and recruitment marketplace. In addition, you state release of the submitted information would “would allow other states to directly approach these specific businesses and their representatives with competing incentives and, thus, undermine Texas’ ability to successfully recruit the businesses.” After review of the information at issue and consideration of the arguments, we find you 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.

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/mo

Ref: ID# 751408

Enc. Submitted documents

c: Requestor
(w/o enclosures)