



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 25, 2020

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

OR2020-09245

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# 817782 (Ref. No. 004-20).

The Office of the Governor (the "governor's office") received a request for 1) a specified application and related documents submitted by Apple, Inc. ("Apple"), during a specified time period and 2) communications between Apple and the governor's office during a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Apple, Inc. ("Apple") and Impact DataSource ("Impact"). 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 Apple and 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 a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation." Gov't

---

<sup>1</sup> You state the governor's office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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 states it has specific marketplace interests in the submitted information because the governor’s office is competing against other states attempting to recruit businesses to relocate or expand their businesses in their respective states. The governor’s office states release of the submitted information would disadvantage Texas by permitting other states to directly approach these entities with competing incentives. 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).<sup>2</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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/gw

Ref: ID# 817782

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Parties  
(w/o enclosures)

---

<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.