



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

OR2020-09274

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# 817779 (Ref. No. 003-20).

The Office of the Governor (the "governor's office") received a request for information relating to the Amazon second headquarters project.¹ You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Amazon.com. Accordingly, you state, the governor's office notified Amazon.com 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 considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹ The governor's office states, and provides documentation demonstrating, the governor's office sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” 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 explain expansion and recruitment of businesses to the State of Texas is a competitive process. You inform us the governor’s office works to promote Texas, in part, by providing various incentives and employing strategies designed to attract new business and expand existing businesses within the state. Therefore, 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

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MG/jxd

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

Ref: ID# 817779

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)