



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 3, 2022

Mr. Kieran Hillis  
Assistant General Counsel and Public Information Coordinator  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2022-12612

Dear Mr. Hillis:

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# 945093 (OOG ID# 089-22).

The Office of the Governor (the "governor's office") received a request for all electronic communications between Governor Abbott or his immediate staff members and former Governor Perry or his immediate staff members during a defined period of time. You state you will redact certain information pursuant to section 552.1175(f) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim 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 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). The governor's office explains it is tasked by statute with

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<sup>1</sup> Section 552.1175(f) of the Government Code authorizes a governmental body to redact information subject to section 552.1175(b) of the Government Code without the necessity of requesting a decision from this office under the Act, if the individual properly elects to keep such information confidential. See Gov't Code § 552.1175(b), (f).

“[facilitating] the location, expansion, and retention of domestic and international business investment to the [S]tate [of Texas (the “state”)]” and “[promoting] and [administering] business and community economic development programs and services in the state, including business incentive programs.” *See* Gov’t Code § 481.022(2)-(3). The governor’s office also explains it competes on behalf of the state with other states for the expansion and recruitment of businesses by “providing various incentives and employing strategies designed to attract new business to the state or assist with the expansion of an existing business within the state.” Thus, the governor’s office asserts it has specific marketplace interests in the information at issue because it competes on behalf of the state to recruit and expand businesses within the state. The governor’s office argues release of the information at issue would provide a competitive advantage to competing states, as well as companies considering relocation or expansion in the state. Based upon these representations and our review, we find the governor’s office has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the governor’s office has demonstrated release of the information at issue would give advantage to a competitor or bidder. Accordingly, the governor’s office may withhold the information you marked under section 552.104(a) of the Government Code. The governor’s office must release the remaining 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 <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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jxd

Ref: ID# 945093

Enc. Submitted documents

c: Requestor  
(w/o enclosures)