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ATTORNEY GENERAL OF TEXAS

July 22, 2022

Mr. Kieran Hillis
Assistant General Counsel
Office of Governor Greg Abbott
P.O. Box 12428
Austin, Texas 78711

OR2022-21638

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# 961310 (OOG ID# 240-22).

The Office of the Governor (the "governor's office") received a request for specified contracts. You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of certain third parties. Accordingly, the governor's office states it notified these third parties 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 information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any interested third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any interested

third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the governor’s office may not withhold the submitted information on the basis of any proprietary interest any interested third party may have in the 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.” *Id.* § 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 “[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.¹ 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.

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

Colin Henry
Attorney
Open Records Division

CEH/jxd

Ref: ID# 961310

Enc. Submitted documents

c: Requestor
(w/o enclosures)