



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Ms. Cathy Bonner
Executive Director
Texas Department of Commerce
P.O. Box 12728
Austin, Texas 78711-2728

OR93-739

Dear Ms. Bonner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 22453.

The Texas Department of Commerce (the "department") received a request for a copy of the department's "Office of Industry Development and Recruitment ("OIDR") August, 1993, report." You have released some of the requested information. You contend, however, that sections 552.104 and 552.110 (former sections 3(a)(4) and 3(a)(10)) of the Government Code except the remainder of the information from required public disclosure.

Section 552.104 excepts from disclosure information "that, if released, would give advantage to a competitor or bidder." Section 552.104 protects the interests of a governmental body in a particular competitive situation and requires a showing of some specific actual or potential harm in such a situation. Open Records Decision No. 593 (1991). In addition, a governmental body may be deemed a competitor in the marketplace for purposes of section 552.104 when competition is authorized by law. Open Records Decision No. 604 (1992) at 2. We believe that section 481.022 of the Government Code gives the department authorization to compete for purposes of section 552.104. Section 481.022 provides in part:

¹We note that the Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

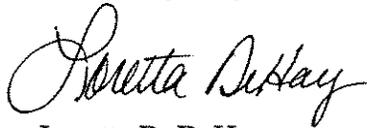
(b) To carry out its duties, the department shall:

- (1) promote this state as a location for business activity and an attraction for tourism;
- (2) prepare and administer a statewide business development program designed to create job opportunities and increase personal income throughout this state

You contend that "if released, the information may put the state and certain municipalities and counties at a competitive disadvantage against other states, regions of the country and other countries in competing for economic development." We agree. You may therefore withhold the information pursuant to section 552.104.² Because we have concluded that you may withhold the requested information under section 552.104, we do not address your arguments under section 552.110 in this ruling.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/MAR/rho

Ref.: ID# 22453

Enclosures: Submitted documents

cc: Mr. Steve Coats
Polson, Coats & Associates, Inc.
11500 Stemmons Freeway
Dallas, Texas 75229
(w/o enclosures)

²We note, however, that you also make it clear that, once a business has made a decision and announced publicly whether it will move to Texas, the department will no longer claim that the information can be withheld under the Open Records Act. Generally, section 552.104 may not be invoked when competition ceases in a particular situation. Open Records Decision No. 541 (1990).