



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2012

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

OR2012-06208

Dear Mr. Davis:

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# 453144 (OOG ID# 062-12).

The Office of the Governor (the "governor's office") received a request for confidentiality and non-disclosure agreements between the governor's office and non-governmental entities entered, drafted, or executed between January 1, 2010 and February 22, 2012. The request specifically excludes draft agreements where a final version of the particular agreement has been executed.¹ You state most of the responsive information has been or will be released to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note the governor's office sought and received a clarification of the request on February 29, 2012. *See Gov't Code* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You contend the governor’s office has specific marketplace interests in the information at issue because the governor’s office is competing against other states attempting to recruit businesses to relocate or expand their businesses in their respective states. You state the information you have marked identifies entities and their representatives considering expansion or relocation to Texas. You explain the information you have marked relates to contracts that have not been executed and the governor’s office is currently negotiating potential approvals or contracts with these entities. You argue release of this information, before contracts are signed or final approval given, would disadvantage Texas by permitting other states to directly approach these entities with competing incentives. Based on these 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. Therefore, we find you have demonstrated release of the information you have marked would cause specific harm to the governor’s office’s marketplace interests in a particular competitive situation. Accordingly, the information you have marked may be withheld under section 552.104 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 453144

Enc. Submitted documents

c: Requestor
(w/o enclosures)