



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2013

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

OR2013-08386

Dear Mr. Sterner:

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# 488499 (OOG ID# 064-13).

The Office of the Governor (the "governor's office") received a request for a copy of the governor's schedule, itinerary, meeting log, list of guests, and list of companies the governor interacted with during a specified trip and the date of the governor's next trip to San Diego. You state you are releasing most of the requested information. You indicate you will withhold e-mail addresses of members of the public pursuant to Open Records Decision No. 684 (2009).¹ You claim a portion 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 of the Government Code 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

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing the withholding of certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 highlighted identifies entities and their representatives considering expansion or relocation to Texas, as well as those that have been chosen as potential economic development incentive recipients. You explain that the governor's office is currently negotiating potential approvals or contracts with the entities at issue, and contracts with these entities have not been executed. 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 highlighted would cause specific harm to the governor's office's marketplace interests in a particular competitive situation. Accordingly, the information you have highlighted may be withheld under section 552.104 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 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 488499

Enc. Submitted documents

c: Requestor
(w/o enclosures)