



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2014

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

OR2014-15891

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# 536575 (OOG ID# 184-14).

The Office of the Governor (the "governor's office") received a request for the most recent Texas Enterprise Zone application of a named company.¹ You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of the requested information may implicate the interests of a third party. Accordingly, you state the governor's office is notifying the third party of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

¹You state the governor's office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

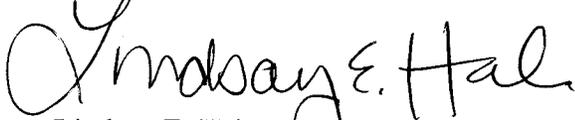
Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 592 (1991) (construing statutory predecessor). This office has held that 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 that 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 explain the governor’s office, on behalf of the State of Texas, competes with other states to recruit and attract new businesses or to assist the expansion of existing businesses. Thus, you argue the governor’s office competes in the marketplace of business expansion and recruitment. The submitted information pertains to a company’s application under the Texas Enterprise Zone program, which you explain promotes job creation and capital investment in economically distressed areas of Texas by allowing approved enterprise projects to apply for state sales and use tax refunds on qualified expenditures. You further explain only a certain number of projects are designated each round, and they are designated on a competitive basis. You state the designations for the round at issue have not yet been made and the release of the submitted application would harm the governor’s office and Texas by allowing other entities to submit less favorable proposals and allowing other states to approach the company at issue 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 submitted information would cause specific harm to the governor’s office’s marketplace interests in a particular competitive situation. Accordingly, the governor’s office may withhold the submitted information under section 552.104.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 536575

Enc. Submitted documents

c: Requestor
(w/o enclosures)