



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 20, 2014

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

OR2014-21177

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# 546557 (OOG ID# 297-14).

The Office of the Governor (the "governor's office") received a request for a specified Texas Enterprise Zone application as well as any communications pertaining to the application. You state you will release some of the information to the requestor. You claim the requested information is 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.<sup>1</sup>

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

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<sup>1</sup>We assume 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.

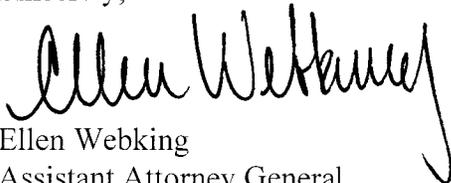
interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/ac

Ref: ID# 546557

Enc. Submitted documents

c: Requestor  
(w/o enclosures)