



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2014

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

OR2014-07330

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# 525893 (OOG ID# 085-14).

The Office of the Governor (the "governor's office") received a request for the Governor's "schedule/calendar" from January 1, 2013, through March 26, 2014. You state the governor's office is releasing some of the responsive information 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 information.

Initially, you state, some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-04448 (2014). In that ruling, we determined the governor's office may withhold the information you marked under section 552.104 of the Government Code and must release the remaining information. You state there is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the governor's office may continue to rely on Open Records Letter No. 2014-04448 as a previous determination and withhold or release that information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same

governmental body, and ruling concludes that information is or is not excepted from disclosure). Because the information you have submitted was not at issue in the previous ruling, we will address the public availability of this 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 governmental entities 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. You further explain the information you have marked identifies entities and individuals who are considering relocating or expanding a business, 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 is 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.

In summary, the governor’s office may continue to rely on Open Records Letter No. 2014-04448 as a previous determination and withhold or release that information in accordance with that ruling. The governor’s office may withhold the information you have marked 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.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,

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/ac

Ref: ID# 525893

Enc. Submitted documents

c: Requestor  
(w/o enclosures)