



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2014

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

OR2014-11906

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# 529720 (OOG ID Nos. 124-14, 126-14, and 129-14).

The Office of the Governor (the "governor's office") received three requests for information pertaining to Toyota Motor North America Inc. ("Toyota"), including a specified contract with Toyota and Toyota's Texas Enterprise Fund application and related communications. You state the governor's office does not have information responsive to the request for the specified contract.¹ You state the governor's office will release some information. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Toyota. Accordingly, you state you notified Toyota of the requests for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from an attorney on behalf of Toyota. We have considered the submitted

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

arguments and reviewed the submitted information, a portion of which consists of a representative sample.²

Initially, we note Toyota seeks to withhold information not submitted to this office by the governor's office. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the governor's office, this ruling does not address this information and is limited to the information submitted as responsive by the governor's office.

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 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 submitted information 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 submitted information relates to entities considering expansion or relocation to Texas and have been chosen as potential economic development incentive recipients. You state the identity of one of the entities has not been made public. You explain 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 seriously 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

²We 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.

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 of the Government Code.³

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 529720

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

Toyota Motor North America, Inc.
c/o Mr. James C. Ho
Gibson, Dunn & Crutcher, L.L.P.
2100 McKinney Avenue
Dallas, Texas 75201-6912
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.