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ATTORNEY GENERAL OF TEXAS

September 6, 2016

Mr. Guy N. Goodson
Counsel for Port of Beaumont Navigation District
Germer Attorneys at Law
P.O. Box 4915
Beaumont, Texas 77704

OR2016-19984

Dear Mr. Goodson:

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# 625716.

The Port of Beaumont Navigation District (the "port"), which you represent, received a request for certain contracts and agreements during a specified period. You claim the submitted information is excepted from disclosure under sections 552.101 through 552.152 of the Government Code. You also state the proprietary interests of Fortress Transportation & Infrastructure Investors, L.L.C. ("Fortress") might be implicated. Accordingly, you notified Fortress of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305. We have considered your claimed exceptions.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Fortress. Accordingly, Fortress has not demonstrated it has a protected proprietary interest in any of the requested information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case

that information is trade secret), 542 at 3. Accordingly, the port may not withhold the requested information on the basis of any proprietary interests Fortress may have in the information.

We must address the port's responsibilities under the Act for requesting a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that wishes to withhold public information pursuant to one of the exceptions to disclosure is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The port received the request for information on June 21, 2016. As of the date of this letter, the port has not submitted written comments stating the reasons the claimed exceptions apply or a copy or representative sample of the requested information. Accordingly, we conclude the port failed to comply with the requirements of section 552.301(e) of the Government Code in asking this office for a ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the port failed to comply with the requirements of the Act, it has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, because the port has not submitted the requested information to this office for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order the port to release the requested information in accordance with section 552.302 of the Government Code. If the port believes the information is confidential and may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 625716

Enc. Submitted documents

c: Requestor

Third Party