



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 1, 2017

Mr. David A. McNamara  
Assistant General Counsel  
Port of Houston Authority  
111 East Loop North  
Houston, Texas 77029-4326

OR2017-04378

Dear Mr. McNamara:

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# 647539.

The Port of Houston Authority (the "port") received a request for the "monthly volumes of each container Shipping Line calling [the port] by service." You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Atlantic Container Lines; CCNI Container Lines; COSCO Container Lines America, Inc.; Evergreen Shipping Agency (America) Corp; Hamburg Sud North America, Inc. ("Hamburg Sud"); Hapag-Lloyd America, Inc. ("Hapag-Lloyd"); Hyundai Merchant Marine; MSC Houston; NYK Line; OOCL USA; and ZIM Integrated Shipping Services, Ltd. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information 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 Hamburg Sud and Hapag-Lloyd. We have reviewed the submitted information and the submitted arguments.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The port states it has specific marketplace interests in the information at issue because the port competes with other public and private ports on all three coasts for container cargo. In addition, the port states release of the information could cause harm to the port because its competitors could use the information to gain unfair advantage in the marketplace or to undermine the port’s business agreements and opportunities. After review of the information at issue and consideration of the arguments, we find the port has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the port may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 647539

c: Requestor

11 Third Parties

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.