



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2017

Mr. Ronald Mills
Port Director
Port Mansfield
400 West Hidalgo, Suite 200
Raymondville, Texas 78580-3529

OR2017-18260

Dear Mr. Mills:

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# 670747.

The Port of Mansfield (the "port") received a request for documents pertaining to a specified investigation. The port claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception the port claims and reviewed the submitted information.

Initially, we must address the port's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records 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

¹Although the port does not cite to section 552.108 of the Government Code in its brief to this office, we understand the port to raise this section based on the substance of its argument.

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 id.* § 552.301(e). The port received the request for information on April 6, 2017. The port does not inform us it was closed for any business days between April 6, 2017, and April 27, 2017. Accordingly, the port was required to provide the information required by section 552.301(b) by April 20, 2017. Moreover, the port was required to provide the information required by section 552.301(e) by April 27, 2017. However, the envelope in which the port provided the information required by sections 552.301(b) and 552.301(e) was postmarked June 7, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the port failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *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). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Although the port indicates the Texas Rangers may have an interest in withholding the information, as of the date of this letter, the port has not informed us, nor have we received any correspondence demonstrating, the Texas Rangers object to the release of the information. Accordingly, we find the port may not withhold the submitted information under section 552.108 on behalf of the Texas Rangers. However, section 552.117 of the Government Code can provide a compelling reason to overcome the presumption of openness.² Therefore, we will address the applicability of section 552.117 to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the port must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The port 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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 670747

Enc. Submitted documents

c: Requestor
(w/o enclosures)