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ATTORNEY GENERAL OF TEXAS

December 11, 2017

Mr. David F. Brown
Counsel for the Port of Houston Authority
Ewell, Brown & Blanke Knight, LLP
111 Congress Avenue, 28th Floor
Austin, Texas 78701

OR2017-28103

Dear Mr. Brown:

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# 687376.

The Port Authority of Houston (the "authority"), which you represent, received a request for a specified lease between the authority and a named entity. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state, and provide documentation showing, you notified Louis Dreyfus Corporation of the request for information and of its 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 considered the exception you claim and reviewed the submitted information.

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, 841 (Tex. 2015). You state the authority has specific marketplace interests in the information at issue because the authority is competing with other land owners for potential lessees in the Houston ship channel area. In addition, you state release of the submitted information would allow a potential lessee to use the information to bargain for a lower price at potential expense to the authority by establishing "a ceiling for rentals and other terms." For many years, this office concluded the terms of

a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). See generally Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to Boeing, section 552.104 is not limited to only ongoing competitive situations, and a governmental body need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. Boeing, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find you established release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the submitted information under section 552.104(a) 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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 687376

Enc. Submitted documents

c: Requestor
(w/o enclosures)