



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2018

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

OR2018-00800

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# 691353.

The Port Authority of Houston (the "authority"), which you represent, received two requests from different requestors for specified leases and related agreements pertaining to a specified site. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Cooper/Ports America, LLC; Cargill, Incorporated; and the Louis Dreyfus Corporation. Accordingly, you state, and provide documentation showing, you notified these 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the first request for information because the requestor seeks only current agreements. This ruling does not address the public availability of any information to the first requestor that is not responsive to his request and the department is not required to release such information to the first requestor in response to this request.

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[.]” After review of the information at issue and consideration of the arguments, we find you have 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 691353

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)