



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2019

Mr. Dane C. Bruun
Counsel for the Port of Corpus Christi Authority of Nueces County
Welder Leshin Lorenz McNiff Buchanan Hawn, LLP
800 North Shoreline Boulevard, Suite 300 North
Corpus Christi, Texas 78401

OR2019-05727

Dear Mr. Bruun:

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# 752248 (Ref. No. 66075178).

The Port of Corpus Christi Authority of Nueces County (the "authority"), which you represent, received a request for three categories of information pertaining to the authority's employment of lobbyists and consultants and the construction of a specified facility. You state the authority has no information responsive to two categories of the request.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Government Code. You also state you notified EAI, Inc. (“EAI”) 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 received comments from EAI. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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). The authority states it has specific marketplace interests in the information at issue because the authority is competing in “a race in Texas for the development of public and private crude oil export terminals” as well as other “navigation-related business.” In addition, the authority states release of the submitted information would be “an incredible disadvantage to [the authority],” and provide competitors “an unfair competitive advantage.” After review of the information at issue and consideration of the arguments, we find the authority has established the 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.³

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

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Taylor", with a long horizontal stroke extending to the right.

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/mo

Ref: ID# 752248

Enc.

c: Requestor