



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Mr. Dane C. Bruun  
Counsel for the Port of Corpus Christi Authority of Nueces County  
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Corpus Christi, Texas 78401

OR2019-10393

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# 760761 (Reference Nos. 013019.21, 013019.22, 013019.23, 013019.24, 013019.25).

The Port of Corpus Christi Authority of Nueces County (the "authority"), which you represent, received five requests from the same requestor for five categories of records pertaining to a named company and specified reports. You state the authority has released some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from The Port of Corpus Christi, LP. *See*

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<sup>1</sup>We 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.

Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note Exhibit E consists of a completed report that is subject to section 552.022(a)(1) of the Government Code. Pursuant to section 552.022(a)(1), completed investigations, reports, and evaluations are expressly public unless they are either excepted under section 552.108 of the Government Code or confidential under the Act or other law. *Id.* § 552.022(a)(1). Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). Therefore, the authority may not withhold Exhibit E under section 552.103. As you raise no other exceptions to disclosure of the information at issue, the authority must release Exhibit E pursuant to section 552.022(a)(1) of the Government Code. However, we will address your arguments against disclosure of the remaining 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 remaining information 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, you state release of the information at issue would give the authority’s competitors “an unfair competitive advantage over [the authority] in attracting new navigation-related business to their respective land or terminals.” After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the remaining information under section 552.104(a) of the Government Code.<sup>2</sup>

In summary, the authority must release Exhibit E pursuant to section 552.022(a)(1) of the Government Code. The authority may withhold the remaining information under section 552.104(a) of the Government Code.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/mo

Ref: ID# 760761

Enc. Submitted documents

c: Requestor  
(w/o enclosures)