



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Mr. Anthony P. Brown
Counsel for the Port of Galveston
McLeod, Alexander, Powel & Apffel, P.C.
P.O. Box 629
Galveston, Texas 77553

OR2019-10449

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# 760774 (ORR# W000446-013119).

The Port of Galveston (the "port"), which you represent, received a request for two specified documents pertaining to named companies. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.131 of the Government Code.¹ Additionally, the port states release of the submitted information may implicate the proprietary interests of Royal Caribbean Cruises, Ltd. ("Royal Caribbean"). Accordingly, the port states, and provides documentation showing, it notified Royal Caribbean of the request for information and of the 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 Royal Caribbean. We have reviewed the submitted arguments and reviewed the submitted information.

¹Although you raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Initially, we note the port has only submitted information responsive to one of the requested documents. To the extent any information responsive to the remaining portion of the request existed on the date the port received the request, we assume the port has released it. If the port has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, the port asserts some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Therefore, we do not address the port's argument under section 552.110.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. Royal Caribbean states it has competitors. In addition, Royal Caribbean states release of the submitted information would "give an advantage to competitors and other third parties in connection with Royal Caribbean's ongoing negotiations with the [p]ort." Further, Royal Caribbean states "[u]ntil the transaction formally closes, any release of the information [at issue] will have a negative impact on Royal Caribbean's negotiation position . . . and unfairly benefit competitors." After review of the information at issue and consideration of the arguments, we find Royal Caribbean has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the port may withhold the submitted information under section 552.104(a) of the Government Code on behalf of Royal Caribbean.²

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

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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 cursive script, appearing to read "Lecelle Clarke".

Lecelle Clarke
Attorney
Open Records Division

LC/eb

Ref: ID# 760774

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)