



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2019

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

OR2019-21632

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# 778904.

The Port of Houston Authority (the "authority"), which you represent, received seventeen requests from the same requestor for specified current leases.¹ You state the authority does not have information responsive to a portion of the request.² You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary

¹You state the authority sought and received clarification of the requests for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

interests of multiple third parties.³ 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(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 on behalf of Ceres Gulf, H-M, and Terminal Link. We have considered the submitted arguments and reviewed the submitted information, portions of which are representative samples.⁴

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 (Tex. 2015). The authority states it has specific marketplace interests in the information at issue because the authority is competing as a lessor of real estate along the Houston Ship Channel. In addition, the authority states release of the responsive documents would allow both competitors and lessees to obtain an unfair advantage in negotiations with the authority. After review of the information at issue and consideration of the arguments, we find 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.⁵

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.

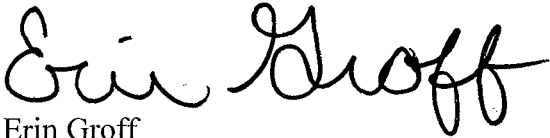
³You state you notified the following third parties: Ceres Gulf, Inc. (“Ceres Gulf”); Coastal Cargo of Texas, Inc.; Contanda Wah Chang Terminal, LLC; Cooper/Ports America LLC; Empire Stevedoring Co. LTD.; Enterprise Products; Frontier Logistics, LP; Hansen-Mueller Company (“H-M”); Houston Terminal; Kinder Morgan Petcoke, L.P.; the Lansing Trade Group, LLC; Richardson Steel Yard, Inc.; Seaboard Corporation; and Terminal Link Bayport, LLC (“Terminal Link”).

⁴We assume that the “representative samples” of records submitted to this office are 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.

⁵As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,

A handwritten signature in black ink that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 778904

Enc. Submitted documents

c: Requestor
(w/o enclosures)

13 Third Parties
(w/o enclosures)