



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 9, 2019

Mr. David F. Brown  
Counsel for the Port of Houston Authority  
Ewell, Brown, Blanke, and Knight  
111 Congress Avenue  
Austin, Texas 78701

OR2019-22049

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# 779755.

The Port of Houston Authority (the "authority"), which you represent, received a request for communications between Mercer and the authority on a specified topic. You claim the requested information is excepted from disclosure under sections 552.101 through 552.158 of the Government Code. You also state release of the requested information may implicate the proprietary interests of Mercer and Payfactors Group, L.L.C. Accordingly, you state, and provide documentation showing, you notified the third parties of the request and of their right to submit arguments to this office.<sup>1</sup> *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 reviewed the exceptions you claim. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

We must address the authority's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence

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<sup>1</sup>As of the date of this letter, this office has not received comments from either of the third parties explaining why any of the requested information should not be released.

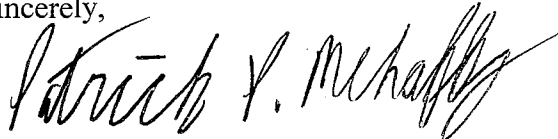
showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The authority received the request for information on May 21, 2019. You state the authority sought clarification on May 29, 2019, and received clarification on May 31, 2019. Thus, for purposes of the Act, the authority is deemed to have received the request on May 31, 2019. However, as of the date of this letter, you have not submitted to this office written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Accordingly, we conclude the authority failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although you raise exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for concluding that any of the information is excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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](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,



Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/jxd

Ref: ID# 779755

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)