



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2019

Ms. Laura Camcioglu
Director of Administration
Port of Galveston
123 Roesenberg Avenue, 8th Floor
Galveston, Texas 77550

OR2019-36554

Dear Ms. Camcioglu:

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# 804198.

The Port of Galveston (the "port") received a request for video recordings pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including federal law. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). On November 25, 2002, the President signed the Homeland Security Act ("HSA") and the Maritime Transportation Security Act ("MTSA"). The HSA created the Department of Homeland Security ("DHS") and transferred the Coast Guard and the Transportation Security Administration ("TSA"), a new agency created in the Department of Transportation the previous year to oversee the security of air travel, to DHS. *See* 6 U.S.C. §§ 111, 203, 468. The MTSA, among other things, added chapter 701 to title 46 of the United States Code,

consisting of new provisions enhancing the security of seagoing vessels and port and harbor facilities. Under the MTSA, the Secretary of DHS is responsible for regulation of port security through the Coast Guard and the TSA, along with the Maritime Administration of the Department of Transportation.

In connection with the transfer of TSA to DHS, the HSA also transferred TSA's authority concerning sensitive security information ("SSI") under section 40119 of title 49 of the United States Code to section 114 of title 49 of the United States Code, and amended section 40119 to vest similar SSI authority in the Secretary of the Department of Transportation.¹ Section 114(r) of title 49 states, in relevant part:

Notwithstanding [the Federal Freedom of Information Act (the "FOIA"),] the Administrator [for Transportation Security, head of TSA] shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act . . . if the Administrator decides disclosing the information would-

- (A) be an unwarranted invasion of personal privacy;
- (B) reveal a trade secret or privileged or confidential commercial or financial information; or
- (C) be detrimental to the security of transportation.

49 U.S.C. § 114(r)(1). This provision requires the TSA's Administrator to "prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act." *Id.* It authorizes the Administrator to prescribe regulations that prohibit disclosure of information requested not only under the FOIA, but also under other disclosure statutes. *Cf. Public Citizen, Inc. v. Federal Aviation Admin.*, 988 F.2d 186, 194 (D.C. Cir. 1993) (former section 40119 authorized FAA Administrator to prescribe regulations prohibiting disclosure of information under other statutes as well as under the FOIA). Thus, the Administrator is authorized by section 114(r) to prescribe regulations that prohibit disclosure of information requested under the Act.

Pursuant to the mandate and authority of section 114(r) of title 49, TSA published regulations found in title 49 of the Code of Federal Regulations, which took effect June 17, 2004. *See* 69 Fed. Reg. 28066. Section 1520.1(a) of these regulations provides that the regulations govern the disclosure of records and information that TSA has determined to be SSI as defined in section 1520.5 of title 49 of the Code of Federal Regulations. 49 C.F.R. § 1520.1(a). Section 1520.5 defines SSI to include information obtained or developed in

¹ This ruling does not construe the parallel federal statutes and regulations which apply to the Department of Transportation.

the conduct of security activities, including research and development, the disclosure of which TSA has determined would be detrimental to the security of transportation. *Id.* § 1520.5(a)(3).

Section 1520.5 lists sixteen categories of information that constitute SSI, including “[s]pecific details of . . . maritime . . . transportation security measures, both operational and technical, whether applied directly by the Federal government or another person[.]” *Id.* § 1520.5(b)(8). Section 1520.9 provides that those covered by the regulation, which, among others, includes the operator of a maritime facility required to have a security plan under the MTSA, “must [t]ake reasonable steps to safeguard SSI . . . from unauthorized disclosure[.]” “must [d]isclose . . . SSI only to covered persons who have a need to know[.]” and “[r]efer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS.” *Id.* §§ 1520.7(d), .9(a). Section 1520.11 provides that a local government employee has a need to know SSI if access to the information is necessary for performance of the employee’s official duties on behalf or in defense of the interests of the local government. *See id.* § 1520.11(b)(1).

You state the port is an operator of a maritime facility required to have a security plan under the MTSA. *See* 46 U.S.C. § 70103(c); 33 C.F.R. § 105.400 (requiring owner or operator of maritime facility to submit security plan to DHS). Under section 101.305 of title 33 of the Code of Federal Regulations, an operator of a maritime facility required to have a facility security plan must report breaches of security to the National Response Center of the Coast Guard. Under section 70103(d), information related to security plans, procedures, or programs for vessels and port facilities is protected from public disclosure. *See* 46 U.S.C. § 70103(d). You also assert the requested information contains SSI pertaining to the maritime facility.

Based on the above described statutory and regulatory scheme and our review of your arguments, we find the decision to release or withhold the information at issue is not for this office or the port to make, but rather is a decision for the TSA and the Coast Guard. *See English*, 496 U.S. at 79 (state law is preempted to extent it actually conflicts with federal law). Consequently, we conclude the port may not release any of the information at issue at this time under the Act and, instead, must allow the TSA and the Coast Guard to make a determination concerning disclosure.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 <https://www.texasattorneygeneral.gov/open->

² As we are able to make this determination, we need not address your remaining argument against disclosure of the requested information.

[government/members-public/what-expect-after-ruling-issued](#) or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KH', with a horizontal line extending from the end of the signature.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 804198

c: Requestor