



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 21, 2021

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

OR2020-20174A

Dear Mr. Brown:

Our office issued Open Records Letter No. 2020-20174 (2020) on August 12, 2020. Since that date, we have received additional information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 12, 2020. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 838677.

The Port of Houston Authority (the "authority"), which you represent, received two requests from different requestors for information pertaining to a specified request for proposals. You state you have released some information to one of the requestors. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. The authority also states release of the submitted information may implicate the proprietary interests of Griffin and Strong ("Griffin"). Accordingly, the authority states, and provides documentation showing, it notified Griffin of the requests for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 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 Griffin. We have considered the submitted arguments and reviewed the submitted information.

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 exception encompasses section 6103(a) of title 26 of the United

States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the tax forms we indicated constitute tax return information that is confidential under section 6103(a) of title 26 of the United States Code. Accordingly, the authority must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>1</sup> However, we find you have failed to demonstrate the applicability section 6103(a) of title 26 of the United States Code to the remaining information at issue. Therefore, the remaining information at issue may not be withheld under section 552.101 of the Government Code on that basis.

Griffin raises section 552.104 of the Government Code for the remaining information. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address Griffin’s arguments under section 552.104.

Griffin raises section 552.110(c) of the Government Code for the remaining information.<sup>2</sup> Section 552.110(c) states:

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<sup>1</sup> As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

<sup>2</sup> Although Griffin raises former section 552.110(b) of the Government Code in its brief, we understand Griffin to raise current section 552.110(c) of the Government Code based on the substance of its arguments.

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

*Id.* § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Griffin argues the remaining information consists of commercial or financial information subject to section 552.110(c). Upon review, we find the remaining information is either subject to section 552.0222(b) or Griffin has failed to provide specific factual evidence demonstrating the information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the authority may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

In summary, the authority must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The remaining information must be released.

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-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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/eb

Ref: ID# 838677

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)