



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2020

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

OR2020-21031

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# 841461 (POG Req. ID No. W000617-060120).

The Port of Galveston (the "port"), which you represent, received a request for seventeen categories of information pertaining to the port's disposal area. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim. We have also received and considered comments from the requestor's representative. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We must address the port's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. 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 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 port received the request for information on June 1, 2020. You do not inform us the port was closed for any business days between June 1, 2020 and June 22, 2020. This office does not count the date the request was received or holidays for

purposes of calculating a governmental body's deadlines under the Act. Accordingly, the port was required to provide the information required by section 552.301(e) by June 22, 2020. However, as of this date, the port has not submitted to this office a copy or representative sample of the information requested. Consequently, we conclude the port failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 an exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 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 <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,

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 841461

Enc. Submitted documents

c: Requestor