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ATTORNEY GENERAL OF TEXAS

September 1, 2020

Mr. David F. Brown
Counsel for the Port of Houston Authority
Ewell, Brown, Blanke & Knight LLP
111 Congress Avenue, 28th Floor
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OR2020-22002

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# 841236.

The Port of Houston Authority (the "authority"), which you represent, received a request for a specified lease agreement. The authority claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the authority states release of the submitted information may implicate the proprietary interests of Stolt Tankers USA, Inc. ("Stolt"). Accordingly, the authority states, and provides documentation showing, it notified Stolt of the request for information and of its right to submit arguments to this office. *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 considered the exception you claim and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). 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, 841 (Tex. 2015). The authority explains the information at issue consists of a draft lease and related documents. The authority asserts 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. The authority argues release of the information at issue would allow both competitors and lessees to obtain an unfair advantage in negotiations with the authority. Based upon these representations and our review, we find the authority demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the authority demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, the authority may withhold the submitted information under section 552.104(a) 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/rm

Ref: ID# 841236

Enc. Submitted documents

c: Requestor

Third Party