



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2020

Mr. Marshall Swanson
Counsel for the Port of Corpus Christi Authority of Nueces County
Welder Leshin Lorenz McNiff Buchanan Hawn, LLP
800 North Shoreline Boulevard, Suite 300 North
Corpus Christi, Texas 78401

OR2020-30922

Dear Ms. Swanson:

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# 856605.

The Port of Corpus Christi Authority of Nueces County (the "authority"), which you represent, received a request for e-mail communications between specified parties during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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 states it has specific marketplace interests in

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

the information at issue because the authority is competing with other local and governmental competitors for the development of public and private crude oil export terminals, navigation-related business, and long-term business growth. In addition, the authority states release of this information would provide competitors information they could utilize to “undercut [the authority’s] rental rates, minimum throughput requirements, and other commercial terms” providing an unfair advantage in attracting new navigation-related business. Further, the authority argues release of the information at issue would give its competitors “specific knowledge of certain material business terms to expect from [the authority], including economic incentives,” which would allow the competitors “an unfair advantage in assembling their own economic incentive packages[,]” and would negatively impact the authority’s ability to negotiate contractual terms and “impair its ability to effectively compete in the market[.]” Based upon your representations and our review, we find you have demonstrated the authority has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated the release of the information at issue 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.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-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/jxd

Ref: ID# 856605

c: Requestor

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.