



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2022

Mr. Dane C. Bruun  
Attorney for the Port of Corpus Christi Authority  
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800 North Shoreline Boulevard, Suite 300 North  
Corpus Christi, Texas 78401

OR2022-25907

Dear Mr. Bruun:

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# 965639 (Ref. No. 060722.001).

The Port of Corpus Christi Authority (the "authority"), which you represent, received a request for the performance evaluations of the authority's chief executive officer (the "CEO") by the authority's commissioners during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information consists of a completed evaluation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under the Act or "other law." Gov't Code § 552.022(a)(1). Although you seek to withhold the information at issue under section 552.111 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, the authority

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<sup>1</sup> 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 that those records contain substantially different types of information than that submitted to this office.

may not withhold the information at issue under section 552.111. However, section 552.101 of the Government Code makes information confidential under the Act. Accordingly, we will consider your argument under this exception for the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the authority may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy. The authority must release the submitted information.

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

MG/eb

Ref: ID# 965639

c: Requestor