



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

Mr. Wm. Hulse Wagner
McLeod, Alexander, Powel, & Apffel, P.C.
Three Post Oak Central
1990 Post Oak Boulevard Suite 120
Houston, Texas 77056

OR2011 - 04110

Dear Mr. Wagner:

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# 412447.

The Port of Galveston (the "port"), which you represent, received a request for the engineer's estimate on a specified project. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception.

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. Under section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(A), (D). You represent that the port received the request at issue on January 10, 2011; however, as of the date of this ruling you have not submitted arguments explaining why the stated exceptions apply or a copy of the specific information requested or representative samples of it. Thus, the port has failed to comply with the procedural requirements mandated by section 552.301.

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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the port has failed to comply with the procedural requirements of the Act, the port has waived section 552.104 of the Government Code, which is a discretionary exception. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Further, because the port has not submitted any information for our review, we have no basis for finding any information confidential. Thus, we have no choice but to order the port to release the requested information. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court pursuant to section 552.324 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 412447

Enc. Submitted documents

c: Requestor
(w/o enclosures)