



December 2, 1999

Ms. Martha T. Williams
General Counsel
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77252-2562

OR99-3488

Dear Ms. Williams:

You ask the whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 130233.

The Port of Houston Authority (the "Port") received a request for the following information:

- 1) The published salaried income of the position of Executive Director from the year 1993 through 1999
- 2) the amount, and/or number, of salary increases in **monetary and percentage** amounts for the following from the year 1995 through 1999 (listed by year in which increases(s) occurred).
 - Managing Director
 - Director of Operations
 - Director of Trade Development
 - Director of Protection Services
 - General Manager of Container Operation - Barbours Cut Terminal
 - Container Operations Manager - Barbours Cut
 - Terminal/Galveston/Bayport
 - Container Facilities Manager - Barbours Cut Terminal/Galveston/Bayport
 - Manager of Human Resources; and
- 3) The amount and/or percentage of salary **increase** that was given to the Training and Development Manager when the duties of the *full-time* Affirmative Action Officer were merged with the Training and Development Manager to form the newly created position of Business Opportunities Manager.

You state that the requested information in Item 1 will be released to the requestor. You claim the information requested in Item 3 does not exist. The Public Information Act does not require a governmental body to produce information that does not exist. Open Records Decision No. 605 (1992). Finally, you assert that the information requested in Item 2 is

excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governmental body is or may be a party. The Port has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). In its request for a decision dated July 6, 1999, the Port made the requisite showing that litigation is reasonably anticipated by providing this office with a copy of the complaint filed against the Port. The information at issue in this request is related to the same complaint. Therefore, the Port has met both prongs of this test for information to be excepted under section 552.103(a) and it may withhold the information requested in Item 2.

We note, however, that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

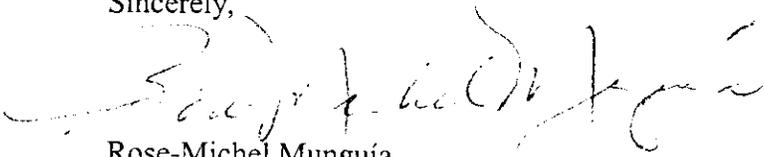
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref.: 130233

Encl.: Submitted documents

cc: Mr. I. Scott Green
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