



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2008

Mr. William Hulse Wagner  
McLeod, Alexander, Powel & Apffel  
P.O. Box 629  
Galveston, Texas 77553

OR2008-06289

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# 309873.

The Port of Galveston (the "port"), which you represent, received a request for "all complaints related to Officer Perkins[.]" You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.111, and 552.139 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note that the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-06236 (2008). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the port must continue to rely on that ruling as a previous determination and

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<sup>1</sup>Although you initially raised section 552.108 of the Government Code, you have not submitted arguments in support of the applicability of that exception. Therefore, the port has waived its claim under this exception. *See* Gov't Code § 552.301(e)(governmental body must provide arguments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 (2000) (discretionary exceptions in general). In addition, although you assert rule 404 of the Texas Rules of Evidence and rule 192.3 of the Texas Rules of Civil Procedure, section 552.101 of the Government Code does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-3 (2002).

withhold or release the requested information in accordance with Open Records Letter No. 2008-06236. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As we are able to make this determination, we do not address your arguments.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

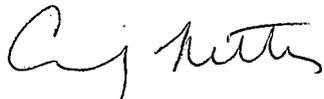
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 309873

Enc. Submitted documents

c: Mr. E.L. "Ted" O'Rourke  
1123 Postoffice Street  
Galveston, Texas 77550  
(w/o enclosures)