



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2013

Mr. David F. Brown  
Partner  
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OR2013-09028

Dear Mr. Brown:

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# 490416.

The Port of Houston Authority (the "authority"), which you represent, received a request for the winning proposal for a specified RFP for janitorial services and the winning proposal for unarmed, uniformed security gate officer services RFP 1082, as well as RFP 1082 itself. You state the port has made or will make some of the requested information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you state release of the requested information may implicate the proprietary interests of Day & Zimmerman LLC ("DZ"). Accordingly, you state you have notified DZ of the request and the company's right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including federal law. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). On November 25, 2002,

the President signed the Homeland Security Act (“HSA”) and the Maritime Transportation Security Act (“MTSA”). The HSA created the Department of Homeland Security (“DHS”) and transferred the Coast Guard and the Transportation Security Administration (“TSA”), a new agency created in the Department of Transportation the previous year to oversee the security of air travel, to DHS. *See* 6 U.S.C. §§ 111, 203, 468. The MTSA, among other things, added chapter 701 to title 46 of the United States Code, consisting of new provisions enhancing the security of seagoing vessels and port and harbor facilities. Under the MTSA, the Secretary of DHS is responsible for regulation of port security through the Coast Guard and the TSA, along with the Maritime Administration of the Department of Transportation.

In connection with the transfer of TSA to DHS, the HSA also transferred TSA’s authority concerning sensitive security information (“SSI”) under section 40119 of title 49 of the United States Code to section 114 of title 49 of the United States Code, and amended section 40119 to vest similar SSI authority in the Secretary of the Department of Transportation.<sup>1</sup> Section 114(r) of title 49 states in relevant part:

Notwithstanding [the Federal Freedom of Information Act (the “FOIA”),] the Under Secretary [for Transportation Security, head of TSA] shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act . . . if the Under Secretary decides disclosing the information would—

- (A) be an unwarranted invasion of personal privacy;
- (B) reveal a trade secret or privileged or confidential commercial or financial information; or
- (C) be detrimental to the security of transportation.

49 U.S.C. § 114(r). This provision requires the TSA’s Under Secretary to “prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act.” *Id.* It authorizes the Under Secretary to prescribe regulations that prohibit disclosure of information requested not only under the FOIA, but also under other disclosure statutes. *Cf. Public Citizen, Inc. v. Fed. Aviation Admin.*, 988 F.2d 186, 194 (D.C. Cir. 1993) (former section 40119 authorized FAA Administrator to prescribe regulations prohibiting disclosure of information under other statutes as well as under the FOIA). Thus, the Under Secretary is authorized by section 114(r) to prescribe regulations that prohibit disclosure of information requested under the Act.

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<sup>1</sup>This ruling does not construe the parallel federal statutes and regulations which apply to the Department of Transportation.

Pursuant to the mandate and authority of section 114(r) of title 49, TSA published regulations found in title 49 of the Code of Federal Regulations, which took effect June 17, 2004. *See* 69 Fed. Reg. 28066. Section 1520.1(a) of these regulations provides that the regulations govern the disclosure of records and information that TSA has determined to be SSI as defined in section 1520.5 of title 49 of the Code of Federal Regulations. 49 C.F.R. § 1520.1(a). Section 1520.5 defines SSI to include information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would be detrimental to the security of transportation. *Id.* § 1520.5(a)(3).

Section 1520.5 lists sixteen categories of information that constitute SSI, including “[s]pecific details of . . . maritime . . . transportation security measures[.]” *Id.* § 1520.5(b)(8). Section 1520.9 provides that those covered by the regulation, which, among others, includes the operator of a maritime facility required to have a security plan under the MTSA, “must [t]ake reasonable steps to safeguard SSI . . . from unauthorized disclosure[.]” and must “[r]efer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS.” *Id.* § 1520.7(a), .9(a). You inform us the authority is an operator of a maritime facility required to have a security plan under the MTSA. *See* 46 U.S.C. § 70103(c); 33 C.F.R. § 105.400 (requiring owner or operator of maritime facility to submit security plan to DHS).

You claim the submitted information relates to security of the Port of Houston (the “Port”). Specifically, you assert the submitted information concerns security personnel qualifications, credentials, identifying information, equipment, and hours worked, the staffing and location of Port gates, and site surveillance responsibilities. You contend the information at issue could be used “to plan incursions onto Port property for the purpose of destroying or compromising Port facilities or third-party cargo or for injuring Port or other personnel authorized to occupy Port premises.” Based on the above described statutory and regulatory scheme and our review of the submitted information, we find the decision to release or withhold the submitted information is not for this office or the authority to make, but rather is a decision for the TSA and the Coast Guard. *See English*, 496 U.S. at 79 (state law is preempted to extent it actually conflicts with federal law). Consequently, we conclude the authority may not release any of the information at issue at this time under the Act and, instead, must allow the TSA and the Coast Guard to make a determination concerning disclosure.<sup>2</sup>

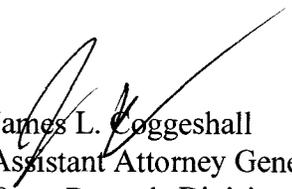
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As we are able to make this determination, we do not address the remaining arguments against disclosure of this information.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 490416

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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