



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2014

Mr. David C. Fisher
Port Director and CEO
Port of Beaumont Navigation District
P.O. Drawer 2297
Beaumont, Texas 77704

OR2014-07087

Dear Mr. Fisher:

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# 521165.

The Port of Beaumont Navigation District of Jefferson County, Texas (the "district") received a request for any and all lease agreements in effect during a specified time period between the district and Kinder Morgan, Inc., Kinder Morgan Terminals, Kinder Morgan Energy Partners, LP, or any affiliates or subsidiaries of these companies (collectively "KM"). You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ You also state you notified KM of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances).

Initially, we note you raise section 552.110 of the Government Code for the submitted information. However, section 552.110 is designed to protect the interests of third parties,

¹Although you raise section 552.101 of the Government Code, you have not provided any argument to support this exception. Thus, we do not address section 552.101. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

not the interests of a governmental body. *See generally* Open Records Decision No. 592 (1991). Thus, we do not address the district's argument under section 552.110.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from KM explaining why the submitted information should not be released. Therefore, we have no basis to conclude KM has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest KM may have in the information. However, we will address your remaining argument against disclosure.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the interests of a governmental body in certain competitive situations, including competitive bidding. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See id.*

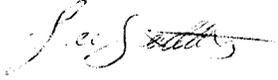
Upon review, we find you have not demonstrated how release of the submitted information would specifically harm the district's interests in a particular competitive situation. Therefore, the district may not withhold any of the submitted information under section 552.104 of the Government Code. As no other exceptions to disclosure have been raised, the district must release the submitted information in its entirety.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 521165

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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