



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1998

Ms. Tracy Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas-1562

OR98-3178

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120721.

The City of Houston (the "city") received a request for "all research files regarding Environmental Delivery Services Inc."¹ You contend that the requested documents are excepted from disclosure pursuant to section 552.127 of the Government Code. You also request "a ruling that a request for an opinion from the Attorney General is . . . not necessary when an exception under section 552.127 clearly applies."

The Seventy-fifth Legislature amended the Open Records Act by adding section 552.127 of the Government Code. Act of May 20, 1997, H.B. 625, 75th Leg., R.S. Section 552.127 provides:

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

¹It is not clear to this office what types of documents constitute a "research file." We therefore assume for purposes of this ruling that all of the documents you submitted to this office for review are responsive to the request.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

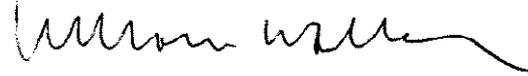
You explain that the Affirmative Action and Contract Compliance Division of the Mayor's Office has the responsibility for certifying businesses as minority and women business enterprises. You state that the requested documents were submitted to the city as part of the certification process. We note, however, that some of the documents before us were not submitted to the city by Environmental Delivery Services Inc., but rather consist of either correspondence from the city or internal memoranda. These documents, which we have marked with yellow flags, clearly do not come within the scope of section 552.127 and therefore must be released.

We have also marked one document with a green flag that appears may have been submitted to the city "in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list." *See* Gov't Code § 552.127(c). If such is the case, the city must release this document because you have not otherwise demonstrated why this document is excepted from required public disclosure.

We assume for purposes of this ruling that none of the remaining documents before us come within the scope of section 552.127(c). Furthermore, it does not appear that the requestor has a right of access to these records under section 552.127(b). Therefore, we conclude that the requested records consisting of documents submitted by Environmental Delivery Services Inc. to the city, except as noted above, are made confidential under section 552.127 and must not be released.

We decline to issue the city a prior determination regarding section 552.127 of the Government Code. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/RWP/ch

Ref.: ID# 120721

Enclosures: Submitted documents

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(w/o enclosures)