



February 26, 1999

Ms. Tracy Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-0565

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122379.

The City of Houston (the "city") received a request for "the entire file of B.E. Delivery, Inc., d/b/a Bobtail Express, Inc. "You have supplied information responsive to this request, which you assert is excepted from public disclosure by section 552.127 of the Government Code.¹ We have considered the exception you claim and have reviewed the documents at issue.

Section 552.127 of the Government Code provides that:

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

¹We note that the supplied information does not encompass the full breadth of the request. If you have not already done so, you must release the balance of all responsive information in your possession unless made confidential by law.

(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 state that the information submitted for our review as "exhibit 2 was submitted to the city as part of the process to become certified as a minority business enterprise (MBE) or a women business (WBE)." Based on this representation, we conclude that the subject information was submitted in connection with an application for certification as a disadvantaged business.

A review of the submitted information does not suggest that any of these records were submitted to the agency "in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list." 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 submitted records consists of documents made confidential under section 552.127 and must not be released. However, we note that some of the submitted documents originated with the city rather than an applicant (e.g. notification letters). As only information submitted by an applicant is excepted from disclosure by section 552.127 of the Government Code, these documents must be released.

You seek a ruling declaring that the city need not request an opinion from our office regarding any future requests for information which may be subject to section 552.127 of the Government Code. We decline to issue such a ruling at this time.

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.

Sincerely,

A handwritten signature in black ink that reads "Michael Jay Burns". The signature is written in a cursive style with a horizontal line at the end.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref.: ID# 122379

Enclosures: Submitted documents

cc: Mr. C. Mark Baker
Fulbright & Jaworski, L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(w/o enclosures)