OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 29, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P. O. Box 1546
Austin, Texas 78767-1546

OR2002-6144

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171355.

The City of Austin (the "city") received a request for four categories of information, two of which pertain to the certification of a named business as a historically underutilized business ("HUB") by the city. You claim that the responsive information pertaining to the named business is excepted from disclosure under section 552.128 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the city does not claim that the rest of the requested information, consisting of information explaining the criteria for a business to be designated as a HUB by the city, and all contracts or subcontracts executed for the performance of electrical work at the Town Lake Community Events Center construction job, are excepted from public disclosure. If the city has not released that information, it must do so immediately. *See* Gov't Code §§ 552.006, .301(a), .302.

We will next address your argument under section 552.128 of the Government Code. Section 552.128 provides as follows:

> (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:
>
> > (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.

Gov't Code § 552.128. You inform this office that the submitted information was supplied to the city by a potential vendor or contractor for the purpose of becoming certified as a minority business enterprise or a women business enterprise, pursuant to Chapter 5-7 of the Code of the City of Austin (Minority-Owned and Women-Owned Business Enterprise Procurement Program). You state that the requestor is not a state or local governmental entity under section 552.128(b)(1). You also state that the requestor has not provided the city with the express written permission of the applicant or the applicant's agent to release the information pursuant to section 552.128(b)(2). Therefore, based on your representations, we conclude that most of the submitted information is made confidential under section 552.128 of the Government Code and must not be released.

We note, however, that the submitted information includes documents prepared by the city and containing information that was not supplied by the company applying for certification.

As you do not make any other arguments for withholding this information from disclosure, you must release it. We have marked the information that must be released to the requestor.

In summary, the city must release the information we have marked. The remaining submitted information must be withheld under section 552.128 of the Government Code.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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).

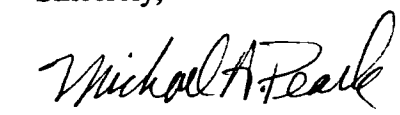
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 171355

Enc. Submitted documents

c: Mr. David Van Os
David Van Os & Associates, P.C.
1606 North Alamo Street
San Antonio, Texas 78215
(w/o enclosures)