ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2006-10558

Dear Ms. Chang:

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# 259113.

The City of Houston (the "city") received a request for "a copy of the application for WBE certification for North Loop Towing" and related documents. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.128, and 552.147 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's duties under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). You inform us that the city received this request on June 23, 2006. Although you timely requested a ruling from this office, you did not claim the applicability of section 552.128 until July 17, 2006. Consequently, you failed to timely raise this exception. *See id.* § 552.302 (governmental bodies failure to comply with procedural requirements of section 552.301 results in

[1]Although you initially raised sections 552.103, 552.108, and 552.130 of the Government Code as exceptions to disclosure, you have not submitted any arguments explaining the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Thus, we assume you no longer assert these exceptions. *See* Gov't Code §§ 552.301, .302.

presumption that information at issue is public and must be released unless compelling reason exists to withhold the information). However, because section 552.128 can provide a compelling reason to withhold information from disclosure, we will address the applicability of this exception along with your timely asserted claims under sections 552.101 and 552.147.

Section 552.128 of the Government Code 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 state that the information at issue was submitted to the city as part of the process to become certified as a historically underutilized or disadvantaged business. The release provision of subsection 552.128(b) does not apply because the requestor is not a state or local governmental entity, and the applicant or applicant's agent has not given the city written permission to release its information. Subsection 552.128(c) does not apply here either. Based on our review of your arguments and the information at

issue, we find that the submitted information is excepted from disclosure pursuant to section 552.128 and must be withheld on this basis.[2]

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. Although there is no statutory deadline for

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[2]As our ruling is dispositive, we need not address the remaining arguments against disclosure.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 259113

Enc. Submitted documents

c: Mr. Richard King
Westside Wrecker Service, Inc.
DBA Northside Storage Lot
36 Tidwell
Houston, Texas 77022
(w/o enclosures)