



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2009-01456

Dear Ms. Alexander:

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# 334433.

The Texas Department of Transportation (the "department") received a request for a report mentioned in a specific letter. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.128 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.128 of the Government Code provides the following:

- (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 the requirements of Section 552.021, 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 assert that the submitted information "was submitted to [the department] in connection with a review of [disadvantaged business enterprise ("DBE")] certification under [the department's] DBE program." You further state that the requestor is not a governmental entity and that the department does not have express written permission from the applicant to release the information. Finally, you assert that the information was not submitted to the department in connection with a specific proposed contractual relationship. Based on these representations, we agree that TxDOT must withhold the submitted information under section 552.128 of the Government Code.¹

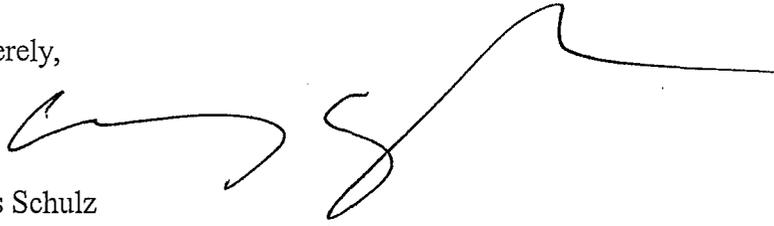
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.oag.state.tx.us/open/index_orl.php, 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

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', written in a cursive style.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 334433

Enc. Submitted documents

cc: Requestor
(w/o enclosures)