



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2011

Ms. Jessica C. Eales  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-02330

Dear Ms. Eales:

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# 409145 (GC No. 17990).

The City of Houston (the "city") received a request for copies of specified certificates for a named entity and copies of applications submitted by a named entity "regarding HUB certification." You indicate the city does not possess information responsive to the first part of the request regarding copies of certificates. We note the Act does not require a governmental body to release information that did not exist when it received a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You claim that the submitted information is excepted from disclosure under section 552.128 of the Government Code. We have considered the exception 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 explain the submitted information was submitted to the city as part of an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program. Further, you explain, and provide supporting documentation demonstrating, the city has the responsibility for certifying businesses as minority business enterprises or women business enterprises. You state the requestor is not a state or local governmental entity, and the applicants or applicants' agents have not given written permission to release their information. Further, we find that subsection 552.128(c) does not apply in this instance. We therefore conclude that the city must withhold the submitted information under section 552.128 of the Government Code.

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](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

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

Ref: ID# 409145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)