



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2014

Mr. Jose L. Gonzales
Beirne, Maynard & Parsons, L.L.P.
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201-7305

OR2014-01249

Dear Mr. Gonzales:

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# 511862 (ORR# 19893).

The North Central Texas Regional Certification Agency (the "agency"), which you represent, received a request for applications submitted and certificates held by Newby Davis, P.L.L.C. ("Newby Davis"). You claim the submitted information is excepted from disclosure under sections 552.110, 552.117, 552.1176, 552.128, 552.130, 552.136, 552.137, and 552.147 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Newby Davis. Accordingly, you state, and provide documentation showing, you notified Newby Davis of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from representatives of Newby Davis. We have reviewed the submitted arguments and the submitted representative sample of information.¹

Section 552.128 of the Government Code provides,

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 inform us the submitted information consists of information submitted to the agency in connection with Newby Davis's application for certification as a Disadvantaged, Minority, and/or Women-Owned Business Enterprise. Thus, you argue the submitted information consists of information submitted to the agency in connection with applications for certifications as historically underutilized or disadvantaged businesses under a local, state, or federal certification program. Upon review, we agree section 552.128 is applicable in this instance. We note the requestor is not a state or local governmental entity. We further note the applicants and their agents have not given written permission to release their information. Further, we find subsection 552.128(c) does not apply in this instance. We therefore conclude the agency must withhold the submitted information under section 552.128 of the Government Code.²

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

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 511862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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