



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2014

Mr. James G. Nolan
Associate Deputy General Counsel
Open Records Division
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2014-21407

Dear Mr. Nolan:

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# 544433 (CPA ORTS# 10744815319).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information related to a named vendor's historically underutilized business ("HUB") and Centralized Master Bidder's List ("CMBL") applications and certifications during a specified time period. We understand you do not have some of the requested information.¹ You state you have released some information to the requestor. You claim 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:

¹You state the named vendor did not apply for registration on the CMBL. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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 state the submitted information consists of the named vendor's HUB application and other records submitted by the vendor in connection with its application. You state the requestor is not a state or local governmental entity and has not provided the comptroller's office with the express written permission of the vendor to release confidential HUB application records. Further, you explain, and we agree, section 552.128(c) does not apply to the submitted information in this instance. Based on your representations and our review, we conclude the comptroller's office must withhold the submitted information under section 552.128 of the Government Code.

You also ask this office to issue a previous determination that would permit the comptroller's office to withhold information submitted by a potential vendor or contractor to the comptroller's office in connection with an application for certification as a historically underutilized or disadvantaged business under section 552.116 of the Government Code

without the necessity of requesting a decision under section 552.301 of the Government Code.² We decline to issue such a previous determination at this time. Accordingly, 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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 544433

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Although you ask this office to issue a previous determination under section 552.116 of the Government Code, we note section 552.116 is not applicable to this information, and section 552.128 of the Government Code is the proper exception.