



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2017-19201

Dear Mr. Falgoust:

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# 672767 (COA PIR Nos. 34948 and 35078).

The City of Austin (the "city") received two requests from the same requestor for information pertaining to the certification applications of three named businesses submitted to the city's Small and Minority Business Resources Department (the "department"). The city states it will release some information to the requestor. The city claims the submitted information is excepted from disclosure under section 552.128 of the Government Code. We have considered the claimed exception and reviewed 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 historically underutilized or disadvantaged business under a local, state, or

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.

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.

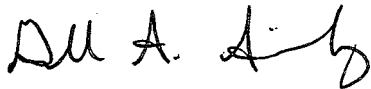
(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted 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. The city states the requested information consists of information submitted to the department in connection with the named businesses' applications for certification as historically underutilized or disadvantaged businesses. The city also states the department reviewed these materials to determine whether the applicants qualified for that certification. Upon review, we agree section 552.128 is applicable to the submitted information. We note the requestor is not a state or local governmental entity. The city informs us it has not obtained permission from the applicants to release their information at issue. Further, we find subsection 552.128(c) does not apply in this instance. We therefore conclude 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.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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is written in a cursive style with a large initial "G" and a long, sweeping tail.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 672767

Enc. Submitted documents

c: Requestor
(w/o enclosures)