



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2019

Mr. Jose Luis Gonzalez
Counsel for North Central Texas Regional Certification Agency
Law Office of Jose Luis Gonzalez P.C.
4310 North Central Expressway, Suite 109
Dallas, Texas 75206

OR2019-15272

Dear Mr. Gonzalez:

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# 769635.

The North Central Texas Regional Certification Agency (the "NCTRCA"), which you represent, received a request for information pertaining to three named businesses. You state the NCTRCA released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.115, 552.116, 552.128, 552.130, and 552.147 of the Government Code.¹ You also indicate release of the submitted information may implicate the proprietary interests of CBC Duty Free LLC, Charles Bush Consulting LLC, and CBI Management. Accordingly, you indicate, and provide documentation showing, you notified the third parties of the request and of their right to submit arguments to this office. *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 considered the submitted arguments and reviewed the submitted information, some of which is a representative sample.²

Initially, we note, and you acknowledge, the NCTRCA failed to comply with section 552.301 of the Government Code. Pursuant to section 552.302 of the Government Code, a

¹Although you cite to section 552.117 of the Government Code in your brief, we understand you to assert section 552.147 of the Government Code based on the substance of your argument.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You assert sections 552.101, 552.104 552.110, 552.115, 552.116, 552.128, 552.130, and 552.147 of the Government Code for the submitted information. Because sections 552.101, 552.115, 552.128, 552.130, and 552.147 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information. However, although you assert the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your argument under section 552.110. Further, we find you failed to establish a compelling reason to address your remaining exceptions.

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.

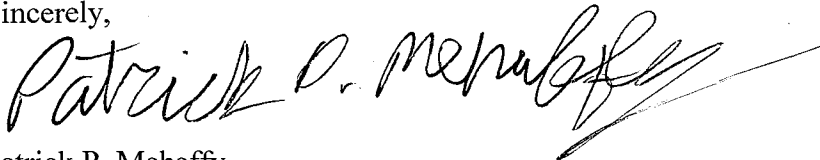
(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted 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 state the submitted information was submitted to the NCTRCA in connection with applications by businesses for certification as airport concessionaire disadvantaged business enterprises or disadvantaged minority and/or women owned business enterprises. You state the requestor is not a governmental entity and does not have express written permission from the applicants or the applicants' agents to release the information. Finally, you inform us the information was not submitted to the NCTRCA in connection with a specific bid, bidder's list, or proposed contractual relationship. Based on these representations, we agree the NCTRCA must withhold the submitted information under section 552.128 of the Government Code.³

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/gw

Ref: ID# 769635

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information