



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Ms. Sarah Parker  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2019-26546

Dear Ms. Parker:

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# 786975.

The Texas Department of Transportation ("TxDOT") received a request for information pertaining to a named business. 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 representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We 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.

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.

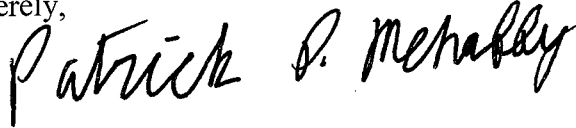
Gov't Code § 552.128. You state the submitted information was submitted to TxDOT in connection with an application for certification as a disadvantaged business entity ("DBE") under TxDOT's DBE program and the Texas Unified Certification Program. You also state the requestor is not a governmental entity and does not have express written permission from the applicant or the applicant's agent to release the information. Finally, you inform us the information was not submitted to TxDOT in connection with a specific bid, bidder's list, or proposed contractual relationship. Based on these representations and our review, we agree TxDOT 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 <https://www.texasattorneygeneral.gov/open->

government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Patrick P. Mehaffy". The signature is written in a cursive style with a large initial "P".

Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/gw

Ref: ID# 786975

Enc. Submitted documents

c: Requestor  
(w/o enclosures)