



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2020

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

OR2020-25008

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# 849549 (CPA FYI# 18665).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information pertaining to a named vendor's historically underutilized business ("HUB") and Centralized Master Bidder's List applications and certifications during a specified time period. You state the comptroller's office has 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:

- (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.

You also ask this office to issue a previous determination that would permit the comptroller's office to withhold HUB Certification Application files under section 552.128 of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). 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 <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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 849549

Enc. Submitted documents

c: Requestor
(w/o enclosures)