



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2022

Ms. Elicia Mitchell
Director of Operations
North Texas Regional Certification Agency
2261 Brookhollow Plaza Drive, Suite 300
Arlington, Texas 76006

OR2022-00095

Dear Ms. Mitchell:

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# 922948 (Ref. No. 09302021).

The North Texas Regional Certification Agency (the "agency") received a request for thirteen points of information pertaining to a specified company. You state the agency has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.128 of the Government Code. You also indicate release of the submitted information may implicate the proprietary interests of Tex-Braska LLC d/b/a Tex-Braska Supply Co., ("Tex-Braska"). Accordingly, you indicate, and provide documentation showing, you notified Tex-Braska of the request and of the 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 received comments from Tex-Braska. We have considered the submitted arguments and reviewed the submitted information

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not consist of any of the points of information requested. This ruling does not address the public availability of any information that is not responsive to the request and the agency is not required to release such information in response to this request.

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 responsive information consists of information submitted by the named company in connection with its application to be certified as a federal disadvantaged business enterprise. We note the requestor is not a state or local governmental entity, and we have no indication the applicants or applicants' agents have given written permission to release their information. Further, we find that subsection 552.128(c) does not apply in this instance. Based on your representations and our review, we conclude the agency must withhold the responsive information under section 552.128 of the Government Code.¹

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.

¹ As our ruling is dispositive, we need not consider the remaining arguments against disclosure of this information.

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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/be

Ref: ID# 922948

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)