



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1997

Ms. Cynthia F. Calhoun
The Ronquillo Law Firm
Harwood Center
1999 Bryan Street, Suite 3450
Dallas, Texas 75201

OR97-2599

Dear Ms. Calhoun:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110403.

The North Central Texas Regional Certification Agency (the "agency"), which you represent, received a request for "[c]opies of any and all records, including, but not limited to, letters, memos, official applications and other documents in your possession related to Lucky Lady Oil Company." You assert that the information is excepted from disclosure pursuant to sections 552.101, 552.102, 552.103, 552.104, 552.110 and 552.127 of the Government Code. We have considered your arguments and have reviewed the information submitted.

In the most recent legislative session, the 75th Legislature amended the Open Records Act by adding section 552.127 of the Government Code. *See* Act of May 20, 1997, H.B. 625, 75th Leg., R.S. Section 552.127 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 federal certification program is excepted from [required public disclosure], 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.

You state that the responsive information in the possession of the agency, a "quasi-governmental entity," is information submitted by the Lucky Lady Oil Company in connection with an application for certification as a historically underutilized or disadvantaged business under a governmental certification program. However, we note that some of the information submitted consists of notification letters from the agency to Lucky Lady Oil Company, as well as "D/M/WBE Certification" certificates. As this information was not submitted by Lucky Lady Oil Company to the agency, it may not be withheld under section 552.127. As you do not raise any other exceptions for this information, it must be released to the requestor.

A review of the documents submitted by the Lucky Lady Oil Company to the agency does not suggest that any of these records were submitted to the agency "in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list." Assuming such is the case, we conclude that the requested records consisting of documents submitted by the Lucky Lady Oil Company to the agency are made confidential under section 552.127(a). Further, because we have no basis on which to conclude that the requestor has a right of access to these records under section 552.127(b),

the agency may not release any of these records in this instance. As we resolve your request under section 552.127, we need not address your other arguments against disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 110403

Enclosures: Submitted documents

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