



April 6, 1999

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. 1562
Houston, Texas 77251-1562

OR99-0922

Dear Ms. Calabrese:

You ask this office to reconsider its ruling in Open Records Letter 98-3178 (1998). Your request for reconsideration assigned ID# 123140.

The City of Houston received a request for "all research files regarding" Environmental Delivery Services, Inc. ("Environmental"). In Open Records Letter 98-3178, this office determined that a portion of the information you submitted as responsive to the request must be withheld under section 552.127, but that an investigation report, certain field audit information, and a document titled "Application for the City of Houston, TX Assembly and Distribution Curbside Containers Contract" (the "Application") were not within the ambit of section 552.127.

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

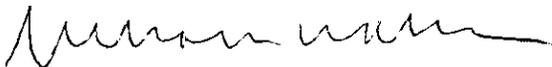
(2) with the express written permission of the applicant or the applicant's agent.

(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.

In your request for reconsideration, you contend that the information Open Records Letter No. 98-3178 found not to be within the scope of section 552.127 should also be excepted from disclosure under that provision. You submit that the investigation report and the field audit documents consist of information "submitted," albeit orally, to city personnel in connection with Environmental's application for certification as an historically underutilized or disadvantaged business, and that the "Application," its title notwithstanding, was also submitted to the city in connection with such certification process and not in connection with a specific proposed contract relationship. *See* §552.127(c) (section does not protect information submitted in connection with a specific proposed contractual relationship). Based on the additional facts you have provided, we conclude that the city must also withhold portions of the investigation report, field audit information and the Application document under section 552.127. We have marked the portions of those documents which must be withheld. Open Records Letter No. 98-3178 is overruled to the extent of its inconsistency with this decision.

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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 123140

Enclosures: Submitted documents

cc: Ms. Paula R. Robertson
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(w/o enclosures)