



February 24, 2000

Ms. Ann Dillon  
General Counsel  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR2000-0662

Dear Ms. Dillon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132456.

The General Services Commission (the "commission") received a request for information regarding the process by which a company may apply for certification as a Minority or Woman-Owned Business ("MWBE") or Historically Underutilized Business ("HUB"). The requestor also asked for information concerning the HUB status of Credit Systems International, Inc. ("Credit Systems"). You have provided the requestor with much of the requested information. However, you claim that the remaining information pertains to Credit Systems and is excepted from disclosure under sections 552.101, 552.110, and 552.128 of the Government Code. You have notified Credit Systems of the request pursuant to section 552.305 of the Government Code. Credit Systems has responded, arguing that the information at issue is excepted under sections 552.101, 552.110, and 552.128. We have considered the exceptions you and Credit Systems claim and reviewed the submitted information.

Section 552.128 of the Government Code provides that:

(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.

Gov't Code § 552.128. Most of the submitted documents contain information Credit Services submitted in connection with its application for certification as an HUB. Credit Services, expressly has not given permission for release of this information. Subsections (b) and (c) do not apply here. Therefore, we conclude that the submitted documents containing information submitted by Credit Services to the commission are made confidential under section 552.128 and must not be released. Accordingly, the commission must withhold most of the documents in Attachment B.

However, some of the documents in Attachment B are not confidential under section 552.128. For example, Attachment B contains public documents such as Credit Services' corporate charter, articles of incorporation, bylaws, and other documents pertaining to its incorporation. Credit Services states that it does not object to the release of these public documents. Accordingly, the commission must release these documents. Furthermore, some of the submitted documents are letters sent by the commission to Credit Services. These letters do not contain information that Credit Services submitted to the commission in connection with HUB certification. Therefore, these documents are not confidential under section 552.128. We have marked the documents that the commission must release.<sup>1</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

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<sup>1</sup>We note that the commission and Credit Services raise sections 552.101 and 552.110 in regard to documents which we find to be confidential under section 552.128. As section 552.128 is dispositive, we do not address the arguments regarding sections 552.101 and 552.110.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 132456

Encl: Submitted documents

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