



July 28, 2000

Ms. Isabel M. Robison  
The Ronquillo Law Firm  
Harwood Center  
1999 Bryan Street, Suite 3450  
Dallas, Texas 75201

OR2000-2866

Dear Ms. Robison:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137505.

The North Central Texas Regional Certification Agency (the "agency") received a request for all certification records held by the agency regarding the Herman Group, Inc. You state that you will provide some of the responsive information to the requestor, but claim that the majority of the information is excepted from disclosure under sections 552.110(b) and 552.128(a) of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.128 of the Government Code protects the interests of historically underutilized and disadvantaged businesses. Section 552.128 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:

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<sup>1</sup>You have notified the Herman Group of the request by a letter dated May 22, 2000 in compliance with section 552.305 of the Government Code. See Gov't Code § 552.305(b) (permitting interested third party to submit to attorney general reasons why requested information should not be released). The Herman Group has not responded to the notice.

(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 indicate that the information designated as exhibit C was submitted to the agency by the Herman Group as part of the certification process. It appears that none of the information at issue comes within the scope of subsections 552.128(b) or 552.128(c). Therefore, we conclude that the responsive information in exhibit C is excepted from public disclosure under section 552.128 and must not be released.<sup>2</sup>

You have also submitted to this office information designated as exhibit E which consists of notes and logs made by agency employees in connection with the documents submitted by the applicant. You argue that this information is also excepted from disclosure pursuant to subsection 552.128(a) because the entries contain specific information that could only have come from the documents submitted by the Herman Group. We agree that some of the entries may be withheld under subsection 552.128(a). For your reference we have marked the relevant information. The remaining information of exhibit E must be released to the requestor.<sup>3</sup>

This letter ruling is limited to the particular records at issue in this request and 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>2</sup>As section 552.128 is dispositive, we need not address your section 552.110 claim regarding this exhibit.

<sup>3</sup>Because the Herman Group has not responded, we have no basis to determine if section 552.110 is applicable to the remaining information contained in this exhibit.

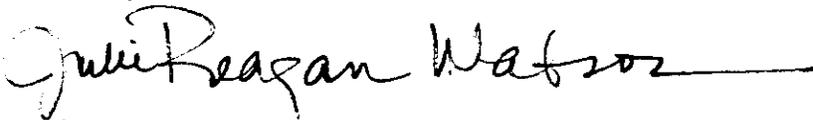
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is written in a cursive style with a long horizontal line extending to the right.

Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

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Encl. Submitted documents

cc: Mr. C. M. Curry  
Texas Legal Investigative Services  
P. O. Box 380744  
Duncanville, Texas 75138-0744  
(w/o enclosures)