



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2013

Mr. Jose L. Gonzalez
Counsel for the North Central Texas Regional Certification Agency
Beirne, Maynard & Parsons, L.L.P.
1700 Pacific Avenue, Suite 4400
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OR2013-19244

Dear Mr. Gonzalez:

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# 505302.

The North Central Texas Regional Certification Agency (the "agency"), which you represent, received a request for eight categories of information, including the agency's strategic plans and board minutes, performance reviews for a named individual, specified complaints, copies of notifications relating to eligibility and certification for specified time periods, and copies of applications and audit reports for specified companies. We understand you will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Admiral Concrete Paving Corporation ("Admiral"), A Plus Carpet & Flooring, LLC ("A Plus"), Bowman Engineering & Consulting, Inc. ("Bowman"), Brandon Staffing Solutions, LLC ("Brandon"), Cobb Professional Services ("Cobb"), Kevin Dean Asphalt Technology Inc. ("Dean"), JPK Consulting ("JPK"), KDAT, LLC ("KDAT"), LCG Development Group ("LCG"), Lift Rising, Inc. ("Lift Rising"), Male Man Sales ("MMS"), Charles Martin Enterprises Inc. ("Martin"), Kathy L. Nealy & Associates ("Nealy"), and TBey Consulting Group, Inc. ("TBey"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for

information and of their right to submit arguments to this office as to why the information at issue should not be released. *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 Bowman. Thus, we have considered Bowman's arguments and reviewed the submitted representative sample of information.¹

We note the submitted information is subject to section 552.128 of the Government Code, which 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 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

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

Gov't Code § 552.128.² Upon review, we find the submitted information consists of information submitted to the agency in connection with applications for certifications as Disadvantaged, Minority, and/or Women-Owned Business Enterprises. Thus, as the submitted information consists of information submitted to the agency in connection with applications for certifications as historically underutilized or disadvantaged businesses under a local, state, or federal certification program, we find that section 552.128 is applicable in this instance. 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. We therefore conclude the agency must withhold the submitted information under section 552.128 of the Government Code.³

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.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

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²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling is dispositive, we need not address Bowman's arguments against disclosure.

Ref: ID# 505302

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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