



October 7, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-5657

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170328.

The City of Fort Worth ("city") received a request for a detailed listing in an electronic format of the city's inventoried items/equipment in the following categories:

- 1) supercomputers;
- 2) mainframe computers and peripherals;
- 3) minicomputers, servers;
- 4) desktop CPUs;
- 5) printers;
- 6) image scanners;
- 7) LAN/WAN switching—hubs, routers, switches;
- 8) computer equipment racks, shelving, chassis;
- 9) portable CPUs;
- 10) purchased software;
- 11) internally developed software;
- 12) customized software;
- 13) enterprise software;
- 14) PBX, KSU, voice mail, phone system; and
- 15) photocopying equipment.

For each item, the requestor seeks:

- 1) a description, including product make/model;
- 2) asset category or code;
- 3) date item was received;
- 4) amount paid/cost; and
- 5) company purchased from.

You assert that the submitted documents are not public information subject to the Public Information Act ("Act") because they have no significance other than their use as tools for the manipulation, protection or maintenance of public property. Alternatively, you claim that the requested information is excepted from disclosure under section 552.136 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of responsive information.¹

As a threshold issue, you argue that the submitted information is not information subject to the Act under the reasoning set forth in Open Records Decision Nos. 401 (1983) and 581 (1990). We note that Open Records Decision No. 581 overruled Open Records Decision No. 401. In Open Records Decision No. 581, this office determined that certain computer-related information, such as source codes, source code documentation and computer program documentation standards, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Having considered your arguments and carefully reviewed the submitted documents, we conclude that the submitted information is not analogous to the information at issue in Open Records Decision No. 581. Accordingly, we find that the submitted documentation is public information subject to the Act.

We note that the submitted materials include information made public by section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

[...]

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022 (emphasis added). We find that the submitted information contains purchase order and invoice information made public by section 552.022. This information is public unless other law expressly makes it confidential.

We now address your argument under section 552.136 of the Government Code. Section 552.136 of the Government Code is entitled "Government Information Related to Security Issues for Computers" and provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Gov't Code § 552.136. The instant request does not seek the type of report or assessment mentioned in section 552.136(b); thus, section 552.136(b) is inapplicable. With regard to the information responsive to the instant request, you specifically explain that knowledge of the manufacturer of your computer racks, shelving, and chassis would enable someone to determine the make and model of your servers, which would make your computer system vulnerable to unauthorized access. You also assert that release of the requested information regarding software would compromise the security of your computer network. You provide us an affidavit in which the security manager of the entity that maintains your computer system swears that the release of information about the specific type of software and equipment used in your network would provide hackers with knowledge of system weaknesses and thereby make infiltration of your computer system easier. Based upon these representations, we find that some of the submitted information relating to software and equipment used in your computer network is excepted from public disclosure under section 552.136(a). Because this information is made confidential by section 552.136(a), none of it may be released per section 552.022. We have marked the information that the

city must withhold under section 552.136. Because you have provided us no basis on which to conclude otherwise, we find that the submitted information related to “PBX, KSU, Voice Mail, Phone System” and “Photocopying Equipment” does not represent information that relates to computer network security or to the design, operation, or defense of a computer network. Ergo, information related to these two categories of requested information must be released to the requestor.

In summary, you must withhold the information that relates to the software and equipment used in your computer network that we have marked under section 552.136, including the purchase order and invoice information that relates to the software and equipment used in your computer network. You must release to the requestor the remainder of the information responsive to the instant request, including the information relating to “PBX, KSU, Voice Mail, Phone System” and “Photocopying Equipment.”

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.

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*).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 170328

Enc. Submitted documents

c: Mr. Kirk Yoshida
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(w/o enclosures)