



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2005

Mr. Clay T. Grover  
Feldman & Rogers, L.L.P.  
5718 Westheimer, Suite 1200  
Houston, Texas 77057

OR2005-08785

Dear Mr. Grover:

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# 232207.

The Fort Bend Independent School District (the "district"), which you represent, received two requests from the same requestor for several categories of information, including information regarding the network security audit and any information that shows the district's plan for growth. You state that the district has released some information to the requestor, and you indicate that some of the responsive information may be withheld from disclosure in accordance with a previous determination issued to the district in Open Records Letter No. 2005-03711 (2005). Additionally, you claim that portions of the submitted information are excepted from disclosure under section 552.139 of the Government Code. You also claim that some of the requested information may contain proprietary information subject to exception under the Act. Therefore, pursuant to section 552.305(d) of the Government Code, you have notified the interested third party, Metrostudy, of the request and of their opportunity to submit comments to this office. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered your arguments and reviewed the submitted information.

Initially, you assert that a portion of the requested information is subject to a previous ruling from this office. In Open Records Letter No. 2005-03711 (2005), this office determined that some of the submitted information in an audit report was excepted from disclosure pursuant to section 552.139. You assert that the facts and circumstances surrounding our previous ruling have not changed<sup>1</sup>. However, we note that relevant facts and circumstances have changed since the issuance of our previous ruling. In the previous ruling, the information at issue was contained in an audit report which assessed the vulnerability of the district's computer network and made recommendations. In this instance, the information at issue consists of a status report indicating the degree of implementation of the recommendations made in the audit report. Thus, the relevant facts and circumstances have changed since the issuance of the prior ruling. Therefore, we conclude that the district may not rely on Open Records Letter No. 2005-03711 as a previous determination. *See* Open Records Decision 673 (2001). Therefore, we will address your claimed exception.

Section 552.139(a) provides that:

- (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.

Gov't Code § 552.139(a). You state that the information at issue reveals "specific remedial steps [the district] has taken and is taking to strengthen its computer network security," and that "public disclosure of this information may weaken or render meaningless the remedial measures taken by [the district] to secure its computer network by would-be hackers and others who may intend harm to [the district]." Upon review, we agree that some of the information for which you claim section 552.139 constitutes information that relates to computer network security or to the design, operation, or defense of a computer network. Accordingly, the information we have marked must be withheld under section 552.139 of the Government Code. However, you have failed to establish that any of the remaining information falls within the scope of section 552.139 of the Government Code. Therefore, no portion of the remaining information may be withheld pursuant to section 552.139.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure.

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<sup>1</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

*See* Gov't Code § 552.305(d)(2)(B). Because Metrostudy did not submit arguments in response to the section 552.305 notice, we have no basis to conclude that this company's information is excepted from disclosure on a proprietary basis. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest Metrostudy may have in the information.

In summary, the district may not rely on our previous determination issued to the district in Open Records Letter No. 2005-03711 with respect to information addressed in that ruling. The information we have marked must be withheld under section 552.139. The information from Metrostudy must be released. As you make no other arguments against disclosure for the remaining information, it must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



Elizabeth C. Reeder  
Assistant Attorney General  
Open Records Division

ECR/sdk

Ref: ID#232207

Enc. Submitted documents

c: Ms. Liz Mitton  
c/o Clay T. Grover  
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(w/o enclosures)