



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

November 4, 2005

Ms. Renée Mauzy
General Counsel
Department of Information Resources
P.O. Box 13564
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OR2005-09993

Dear Ms. Mauzy:

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# 235659.

The Texas Department of Information Resources (the "DIR") received a request for: 1) information pertaining to costs for state-mandated disaster relief/recovery sites of each Texas state agency; 2) whether each state agency chose to use the state-owned San Angelo facility, obtained a waiver to use another disaster relief/recovery site, or built a new site; 3) the city and state in which each disaster relief/recovery site is located; 4) records indicating which state agencies are not in compliance with disaster recovery planning requirements; 5) and any and all contracts with Northrop Grumman Technical Services, Inc. ("NGTSI") since January 1, 1995. You state that the DIR does not maintain information responsive to portions of the request.¹ You also state that the DIR has released most of the remaining responsive information but note that the submitted Supplemental Agreements may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Although you make no arguments and take no position as to whether the submitted information is excepted from disclosure, pursuant to section 552.305 of the Government Code, you notified the interested third parties NGTSI and Bearing Point, Inc. ("Bearing Point"), as well as the Texas Health and Human Services Commission ("HHSC"), the Texas Department of Criminal Justice ("TDCJ"), the Texas Education Agency ("TEA"), the Texas

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Department of Public Safety (“DPS”), the Texas Workforce Commission (“TWC”), the Texas Department of Transportation (“DOT”), the Texas Department of Agriculture (“TDA”), the Texas Alcoholic Beverage Commission (“TABC”), the Texas Parks & Wildlife Department (“P&WD”), the Texas Department of Human Services (“DHS”), the Texas Workers’ Compensation Commission (“TWCC”), and the Texas Office of the Attorney General (“OAG”) of the request and of their right to submit arguments to this office as to why the requested information should not be released to the requestor.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is not responsive to this request. This ruling does not address the public availability of any information that is not responsive to the request, and the DIR need not release such information in response to this request. We have marked this portion of the submitted information accordingly.

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 requested information relating to that party should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, Bearing Point has not submitted comments to this office in response to the section 552.305 notice; therefore, we have no basis to conclude that it has a proprietary interest in the submitted information. *See* Gov’t Code § 552.110(b) (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); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Furthermore, NGTSI has responded to the DIR’s notice stating that it does not object to the release of the submitted information. Accordingly, the DIR may not withhold any portion of the submitted information on the basis of any proprietary interest that Bearing Point or NGTSI may have in this information.

In addition, we have received no comments from HHSC, TDCJ, TEA, DPS, TWC, DOT, TABC, P&WD, DHS, or TWCC claiming confidentiality of any of the information pertaining to these governmental bodies. The OAG responded to the DIR’s notice stating that it does not object to the release of information pertaining to it. Thus, the supplemental agreements pertaining to these governmental bodies must be released.

The TDA has submitted a brief claiming that portions of its supplemental agreement with NGTSI should be withheld from disclosure. The TDA notes that under the terms of its supplemental agreement, information that it deems confidential may not be released by

²*See* Gov’t Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

NGTSI. However, the supplemental agreement also provides that information that has been released to the public is no longer confidential. Thus, the TDA asserts that the release of the information at issue will result in the loss of “valuable confidentiality rights.” However, this office has long held that a governmental body’s promise to keep confidential information that is subject to the Act is not a basis for withholding the information from the public, unless the governmental body has specific statutory authority to keep the information confidential. Open Records Decision Nos. 514 (1988), 479 (1987), 444 (1986). Neither the TDA nor NGTSI argues, nor is it apparent to this office, that the TDA had statutory authority to keep confidential the contract at issue or any of the information contained in the contract. Thus, the submitted information may not be withheld based on this basis.

Finally, TDA raises section 552.139 of the Government Code. Section 552.139 provides as follows:

(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, or 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 § 552.139. TDA argues that portions of its supplemental agreement with NGTSI “identify procedures, computer hardware, and computer software that are unique to TDA’s security protocol” and thus “[r]elease of this information would provide knowledge to a potential hacker that would assist his attack on TDA’s system.” Upon review, we agree that a portion of the information at issue constitutes information that relates to computer network security or to the design, operation, or defense of a computer network. Accordingly, this information, which we have marked, must be withheld under section 552.139 of the Government Code. However, TDA has failed to establish how any of the remaining information at issue 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.

In summary, we have marked a portion of the submitted information that must be withheld under section 552.139 of the Government Code. The remaining submitted information must be released.

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,



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LJJ/seg

Ref: ID# 235659

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