ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2007

Ms. Teris Solis
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2007-00833

Dear Ms. Solis:

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# 268536.

The City of Arlington (the "city") received a request for several categories of information including"[a] copy of the city's internal audit" regarding the municipal court software system and "[c]opies of all consultants reports/audit findings to the city about the software." You state you have released a majority of the requested information. However, you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which 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:

> (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains a completed audit made by the city and completed reports made for the city. Therefore, as prescribed by section 552.022, the city must release the submitted audit and reports unless they are confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you argue that the submitted information is excepted under section 552.103 of the Government Code, this section is a discretionary exception and, as such, is not "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). Therefore, the submitted documents may not be withheld under section 552.103 of the Government Code.

You also raise section 552.139 for the submitted information. This section constitutes "other law" for purposes of section 552.022, and 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. You state that the submitted documents constitute vulnerability assessments. You inform us that the audit contains references to computer security, control, and vulnerability as well as an entire chapter devoted to the security of the court software system. You state that because of the audit findings, the city contracted with two consultants to evaluate the court software system and security issues, which resulted in the submitted reports. One of the submitted reports pertains solely to alleged security issues found by the auditor, and provided detailed technical findings relative to the security of the court

management system. The other report addresses the security concerns and vulnerabilities of data processing operations to harm or damage. Based on your representations and our review, we find that portions of the submitted information constitute information relating to computer network security or assessments of the extent to which the city's electronically stored information is vulnerable to unauthorized access, harm, alteration, damage, or erasure. Accordingly, the information we have marked must be withheld under section 552.139 of the Government Code. However, the city has failed to demonstrate how any portion of the remaining information constitutes information that relates to computer network security or to the design, operation, or defense of a computer network. Therefore, no portion of the remaining information may be withheld under this basis.

We note that some of the information at issue is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the information we have marked pursuant to section 552.139 of the Government Code. The remaining information must be released in accordance with applicable copyright law.

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

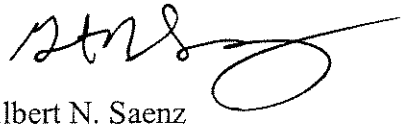
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Gilbert N. Saenz
Assistant Attorney General
Open Records Division

GNS/sdk

Ref: ID# 268536

Enc. Submitted documents

c: Ms. Susan Schrock
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(w/o enclosures)