



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2007

Mr. James G. Nolan  
Assistant General Counsel  
Open Records  
Texas Comptroller of Public Accounts  
P. O. Box 13528  
Austin, Texas 78711-3528

OR2007-03458

Dear Mr. Nolan:

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# 274301.

The Comptroller of Public Accounts (the "comptroller") received two requests from the same requestor for information regarding various computer security issues the requestor had identified while employed at the comptroller. The requestor has specifically excluded from his request "information concerning security vulnerabilities." You state that much of the requested information does not exist. We note that the Act does not require the comptroller to release information that did not exist when it received this request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You state that the comptroller will release some of the requested information, but claim that the remaining information is excepted from disclosure under sections 552.136 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We 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 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.

Before addressing your arguments, we note that some of the submitted information is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming 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. Based on the reasoning in that decision and our review of the information at issue, we determine that the portions of the submitted information that include internet protocol addresses do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released. As our ruling on this issue is dispositive, we need not address your argument under section 552.136 of the Government Code.

You argue that section 552.139 of the Government Code excepts from disclosure the investigative files you have submitted. 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. You claim that a portion of the submitted documents reveal how the comptroller's information security personnel conduct investigations into computer security breaches, relate to computer network security or to the design, operation, or defense of a computer network, and thus fall within the exception against disclosure provided by section 552.139. You claim that the remaining information consists of logs of security scans and internal communications among comptroller information security personnel analyzing and interpreting the scans. You contend that this information constitutes a security assessment of the extent to which the comptroller's network computers are vulnerable to unauthorized access or harm and therefore is confidential pursuant to section 552.139. Upon careful review of your arguments and the submitted documents, we have marked the information that must be withheld under section 552.139 of the Government Code. However, we find that you have failed to demonstrate how any portion of the remaining

information relates to computer network security or to the design, operation, or defense of a computer network. Therefore, none of the remaining information may be withheld on this basis.

In summary, the internet protocol addresses are not subject to the Act and need not be released. We have marked information that must be withheld pursuant to section 552.139 of the Government Code. The remaining 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).

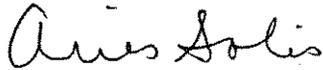
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Aries Solis  
Assistant Attorney General  
Open Records Division

AS/eb

Ref: ID# 274301

Enc. Submitted documents

c: Mr. Dennis Davis  
c/o James G. Nolan  
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(w/o enclosures)