



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2009

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2009-10095

Dear Ms. Smith:

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# 348199 (ORA 09-0790).

The Texas Department of Public Safety (the "department") received a request for information regarding the department's information management service. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.139 of the Government Code provides:

(a) Information is excepted from [disclosure] 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 inform us that the responsive records comprise the department's preparedness plans for a disaster and include specific operational procedures. You state that these records identify vulnerabilities in the department computer network by providing the operational procedures used to restore the network. Upon review, we determine that a portion of the information at issue, which we have marked, must be withheld under section 552.139. However, you have not demonstrated that any of the remaining information at issue relates to computer network security or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Furthermore, you have not demonstrated that this information consists of a computer network vulnerability assessment or report as contemplated in section 552.139(b). Consequently, none of the remaining information may be withheld under section 552.139 of the Government Code.

The department also claims that the remaining information is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by statute. Section 2059.055 of the Government Code provides:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Gov't Code § 2059.055(b). Upon review, we find that you have failed to establish that any portion of the remaining information at issue is related to the security system of a state agency, used to prevent, detect, or investigate criminal activity, or related to an assessment

of the vulnerability of a network to criminal activity. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 2059.055 of the Government Code.

We note that a portion of the remaining information includes the home telephone numbers and cellular phone numbers of department employees that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, to the extent the employees whose information is at issue timely elected confidentiality for their home telephone numbers and personal cellular phone numbers under section 552.024, the department must withhold the employee information under section 552.117(a)(1) of the Government Code. If the employees whose information is at issue did not timely elect confidentiality for their information, no portion of the remaining information may be withheld under section 552.117(a)(1) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.139. To the extent the employees whose information is at issue timely elected confidentiality for their information under section 552.024, the department must withhold the employee information under section 552.117(a)(1) of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a long horizontal line extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/rl

Ref: ID# 348199

Enc. Submitted documents

c: Requestor  
(w/o enclosures)