



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2010

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2010-15214

Dear Mr. 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# 397234 (OR-20100730-5302).

The Texas Health and Human Services Commission (the "commission") received a request for a specified security plan and security roadmap. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received comments from the Texas Department of State Health Services. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the commission did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). While the commission raised sections 552.101 and 552.111 within the ten-business-day time period as required by subsection 552.301(b), the commission did not raise section 552.139 until after the ten-business-day deadline had passed. Generally, if a governmental body fails

to timely raise an exception, that exception is waived. *See id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, mandatory exceptions to disclosure cannot be waived by a governmental body. *See* Gov't Code § 552.352; Open Records Decision No. 574 at n.4 (2001) (mandatory exceptions). Because section 552.139 is a mandatory exception, we will consider the commission's argument under section 552.139, as well as the commission's timely-raised claims under sections 552.101 and 552.111.

Section 552.139 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], 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, 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, erasure, or inappropriate use.

Gov't Code § 552.139. Section 2059.055 of the Government Code provides in pertinent part:

(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.

*Id.* § 2059.055(b). You state the submitted information consists of the commission's Security Roadmap ("roadmap") and Information Security Plan ("plan"). You state the roadmap was developed to assess the effectiveness of security controls and protocols for the commission. You explain the roadmap identifies potential weaknesses and includes "the status of actions to be taken to correct potential risks and specifically addresses any planned activities for correcting any identified weakness . . . and whether any potential risks have been remediated." You state the plan was designed to assess the effectiveness of security controls and protocols and to provide the security framework for protecting the commission's computer systems and data. You argue the release of the plan and roadmap may expose security weaknesses which could facilitate unauthorized access to confidential data and compromise agency security. Based on your arguments and our review of the information at issue, we find you have demonstrated the submitted information consists of an assessment that was collected, assembled, or maintained by the commission to prevent criminal activity regarding the commission's computer network. Accordingly, the commission must withhold the submitted information under section 552.139 of the Government Code.<sup>1</sup>

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 397234

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)