



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2011

Sergeant Juan Contreras  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2011-12040

Dear Sgt. Contreras:

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# 427727.

The McAllen Police Department (the "department") received two requests from the same requestor for "all police [department] operating manuals and/or handbooks" and "all manuals and/or file layouts of each police computer database[.]" You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.139 of the Government Code. You also state the release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you have notified New World Systems Corporation ("New World") of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the department requested clarification of the portion of the request relating to department operating manuals and/or handbooks. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing

request for information). You indicate the department has not received a response to its request for clarification. Accordingly, the department has no obligation at this time to release any information that might be responsive to this portion of the request. However, if the department receives clarification and wishes to withhold any of the information encompassed by the clarified request, you must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

We note that 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 information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from New World explaining why the submitted information should not be released. Although we understand you to claim the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the proprietary interests of third parties, not the interests of a governmental body. As we have not received any arguments from New World, we have no basis for concluding that any portion of the submitted information constitutes its proprietary information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any portion of the submitted information based upon the proprietary interests of New World.

Next, section 552.101 of the Government Code 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 that other statutes make confidential, such as section 418.177 of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.177 provides as follows:

Information is confidential if the information

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or

vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may generally be related to a vulnerability assessment does not make the information *per se* confidential under section 418.177. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert the submitted user guides, which consist of the "NWS Basics: Training/User's Guide Version 8.0" and the "Introduction to Master Files: Training/User's Guide Version 7.0," are confidential under section 418.177 of the Government Code. Upon review, we find you have failed to demonstrate how the submitted information was collected, assembled, or maintained for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Furthermore, you have failed to demonstrate how the submitted information relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Therefore, the submitted information may not be withheld under section 552.101 in conjunction with section 418.177 of the Government Code.

We also understand you to argue the submitted information is confidential pursuant to common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that no portion of the submitted user guides is highly intimate or embarrassing. Therefore, the department may not withhold any of the information in the user guides under section 552.101 in conjunction with common-law privacy.

You also claim the submitted user guides are excepted from disclosure under section 552.139 of the Government Code, which provides in part as follows:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted

information under Section 2059.055, or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, 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 containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 5 (to be codified at Gov't Code § 552.139). The department generally asserts the release of the submitted information "would compromise the security and the design of our computer system database." As noted above, the submitted information consists of two user guides. The submitted information does not relate to computer network security or to the design, operation, or defense of a computer network. Furthermore, you have not demonstrated that this information consists of a computer network vulnerability assessment or report as contemplated in section 552.139(b). Therefore, the department may not withhold the submitted information under section 552.139 of the Government Code.

Finally, you note that the submitted information 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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. As you raise no further exceptions, the department must release the submitted information in accordance with copyright law.

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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/em

Ref: ID# 427727

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

New World Systems Corporation  
888 West Big Beaver Road, Suite 1100  
Troy, Michigan 48084  
(w/o enclosures)