



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2012

Mr. Chad J. Lersch  
Assistant General Counsel  
Texas Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564

OR2012-09124

Dear Mr. Lersch:

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# 456192.

The Texas Department of Information Resources (the "department") received a request for copies of the proposals, including original proposals, all supplementary submissions, and best and final offers, submitted by two named companies in relation to a specified request for offers. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.139 of the Government Code. You also believe release of the submitted information may implicate the interests of third parties. Accordingly, you state the department notified ACS State & Local Solutions, Inc. ("ACS") of the request for information and of its right to submit arguments stating why its information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous ruling by this office. In Open Records Letter No. 2012-06303 (2012), this office ruled, in part, that the department must withhold portions of the submitted proposals under section 552.139 of the Government Code. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent

the submitted information is identical to the information previously requested and ruled upon by this office, the department may continue to rely on the prior ruling as a previous determination and withhold or release the information previously ruled on in accordance with Open Records Letter No. 2012-06303. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the previous decision, we will address your arguments.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from ACS explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate ACS's interests. *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, we conclude that the department may not withhold any of the submitted information on the basis of any interest ACS may have in the information.

You raise section 552.139 of the Government Code for the submitted information. Section 552.139 provides, in pertinent part:

(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 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[.]

Gov't Code § 552.139(a), (b)(1)-(2). 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 information at issue contains the physical addresses of State of Texas (the “state”) computer facilities and “specific software that runs on certain mainframes and services within the [s]tate’s data network.” You explain that the release of this information could subject the state’s information resources to attack or unauthorized access, which “could subject the [s]tate’s electronically stored information to alteration, damage, or erasure.” Based on your representations and our review, we find some of the information at issue falls within the scope of section 552.139. As such, we conclude the department must withhold this information, which we have marked, under section 552.139 of the Government Code. However, we find you have failed to demonstrate the remaining information for which you raise section 552.139 relates to computer network security, the design, operation, or defense of the department’s computer network, or an assessment of the department’s computer network vulnerabilities. Consequently, none of the remaining submitted information may be withheld under section 552.139.

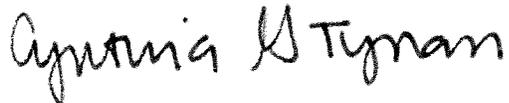
In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open Records Letter No. 2012-06303 as a previous determination and withhold or release the requested information we previously ruled on in accordance with that prior ruling. The department must withhold the information we have marked under section 552.139 of the Government Code. The department must release the remaining information.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/bs

Ref: ID# 456192

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

ACS State & Local Solutions, Inc.  
Attention: Legal Department  
8260 Willow Oaks Corporate Drive  
Fairfax, Virginia 22031  
(w/o enclosures)