



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2012

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

OR2012-11754

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# 460229.

The Texas Department of Information Resources (the "department") received a request for "bids submitted for the Data Center Services recompense," including any information identified as proprietary or confidential by the bidders.<sup>1</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.139 of the Government Code. You also state release of some of the submitted information may implicate the interests of AT&T Consulting ("AT&T"); CGI Technologies and Solutions, Inc. ("CGI"); HP Enterprises Services ("HP"); and Keane, Inc. ("Keane"). Accordingly, the department notified these third parties of the request for information and of their right to submit arguments stating why the submitted 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

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<sup>1</sup>You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

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 previous requests for information, in response to which this office issued Open Records Letter Nos. 2012-06303 (2012), 2012-08165 (2012), and 2012-09124 (2012). As we have no indication that the law, facts, and circumstances on which these prior rulings were based have changed, the department must continue to rely on Open Records Letter Nos. 2012-06303, 2012-08165, and 2012-09124 as previous determinations and withhold or release the requested information at issue in accordance with the prior rulings. *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 submitted information is not encompassed by the previous decisions, we will address your arguments against disclosure.

You raise section 552.110 of the Government Code for a portion of the submitted information; however, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. As such, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable. 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 any of the interested third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the information at issue would implicate their 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 the department may not withhold any of the information at issue on the basis of any interests AT&T, CGI, HP, or Keane may have in the information at issue.

You raise section 552.139 of the Government Code for Attachments 7-B and 12-A in the information at issue. 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 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, erasure, or theft.” Based on your representations and our review, we find most of the information at issue falls within the scope of section 552.139. However, we find you have failed to demonstrate some of the 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 this information, which we have marked for release, may be withheld

under section 552.139. Thus, with the exception of the information we have marked for release, we conclude the department must withhold Attachments 7-B and 12-A under section 552.139.

We note some of the submitted information appears to be 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.

In summary, to the extent the requested information is the same information that was previously ruled upon, the department must continue to rely on Open Records Letter Nos. 2012-06303, 2012-08165, and 2012-09124 as previous determinations and withhold or release requested information in accordance with these prior rulings. With the exception of the information we have marked for release, the department must withhold Attachments 7-B and 12-A under sections 552.139. The department must release the remaining information; however, any information protected by copyright may only be released 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 black ink, appearing to read "Michelle R. Garza", with a stylized flourish at the end.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 460229

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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