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July 26, 2013

Ms. Angie A. Welborn
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OR2013-12917

Dear Ms. Welborn:

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# 494368.

The State Auditor's Office ("SAO") received two requests for all annual reports and reports of periodic audits submitted to SAO during a specified time period.¹ You state SAO has released some information. Although you take no position on whether the submitted information is excepted from disclosure, you state release of this information may implicate the interests of the Office of the Governor (the "governor's office"), the Office of the Attorney General ("OAG"), the Texas Comptroller of Public Accounts (the "comptroller's office"), the Texas Department of Public Safety ("DPS"), the Texas Department of Transportation ("DOT"), the Texas Department of State Health Services ("DSHS"), the Texas Health and Human Services Commission ("HHSC"), the Texas Alcoholic Beverage Commission ("TABC"), the Teacher Retirement System ("TRS"), the Adjutant General's Department ("AGD"), the Texas State Library and Archives Commission ("TSLAC"), the

¹We note SAO sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S. W 3d 3 80,3 87 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad 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).

University of Texas System (“UT”), the University of Texas at Arlington (“UTA”), the University of Texas at Brownsville (“UTB”), the University of Texas of the Permian Basin (“UTPB”), the University of Texas M.D. Anderson Cancer Center (“M.D. Anderson”), the University of Texas Health Science Center at San Antonio (“UTHSC”), the Texas A&M University System (“TAMU”), and the Texas State University System (“TSU”). Accordingly, you have notified these third parties of the request and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). The comptroller’s office and TSLAC inform this office they have no objection to the release of their submitted information. We have received and considered comments from the governor’s office, OAG, DPS, DOT, DSHS, HHSC, TABC, TRS, UT, UTA, UTPB, M.D. Anderson, UTHSC, TAMU, and TSU. We have reviewed the submitted representative sample of information.²

Initially, we address DSHS’s assertion its submitted information is not subject to the Act. The Act is applicable only to “public information.” *See id.* § 552.021. Section 552.002 of the Act defines public information as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002. Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). This office has determined certain computer information, such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. *See* Open Records Decision No. 581 (1990). DSHS states its information consists of data dictionaries and data schema that describe aspects of a database and are used as guides by database programmers who maintain information systems. However, upon review, we note DSHS’s information consists of an internal audit completed to ensure the protection of sensitive data. Consequently, we find DSHS has failed to establish the information at issue consists of computer information, such as source codes, documentation information, and other computer programming that has

²We assume the “representative sample” of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

no significance other than its use as a tool for the maintenance, manipulation, or protection of public property. Accordingly, the information at issue is subject to the Act, and we will consider DSHS's argument against its disclosure.

Next, DPS seeks to withhold some of its information pursuant to Open Records Letter No. 2012-05787 (2012). We note, however, this ruling was issued to DPS, not to SAO. Consequently, SAO may not rely on Open Records Letter No. 2012-05787 to withhold any of DPS's information. *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).

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 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. 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). TABC states portions of its information contain information about TABC's automated information resource security measures and protocols and discussion about TABC's passwords, physical security, penetration tests, and business resumption information. TABC asserts release of such information could allow unauthorized access, alteration, damage, erasure, or inappropriate use of electronically stored information containing sensitive, critical, or confidential data. Based on TABC's representations and our review, we find TABC has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold TABC's information at issue, which we have marked, under section 552.139 of the Government Code.³

HHSC states its information constitutes vulnerability reports which, if released, would serve as a road map for hackers seeking to access confidential client information or disrupt the databases served by HHSC's computer network. Based on HHSC's representations and our review, we find HHSC has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold HHSC's information, which we have marked, under section 552.139 of the Government Code.⁴

TRS states its information assesses TRS's processes for backing up, copying, and archiving data on TRS's computer networks. TRS further states the information outlines recommendations regarding risk assessments, procedures for storage, and management's responses for how to handle identified risks. Based on TRS's representations and our review, we find TRS has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold TRS's information, which we have marked, under section 552.139 of the Government Code.⁵

UTPB, UTHSC, UTA, and M.D. Anderson state their information, and UT claims some of its information, relates to network security and consists of assessments of software and computer networks, systems, and programs, the release of which would make UTPB, UTHSC, UTA, M.D. Anderson, and UT vulnerable to unauthorized access or harm. Based on these representations and our review, we find they have demonstrated the applicability of

³As our ruling is dispositive, we need not address TABC's remaining argument against disclosure.

⁴As our ruling is dispositive, we need not address HHSC's remaining argument against disclosure.

⁵As our ruling is dispositive, we need not address TRS's remaining arguments against disclosure.

section 552.139 to their information at issue; therefore, SAO must withhold UTPB's, UTHSC's, UTA's, M.D. Anderson's, and UT's information at issue, which we have marked, under section 552.139 of the Government Code.⁶

DPS states some of its information discusses vulnerabilities in DPS's information technology areas, including the Driver's License System program and overall information technology security, including assessments of the extent to which various information technology programs and systems are vulnerable to alteration, damage, erasure, and inappropriate use. Based on DPS's representations and our review, we find DPS has demonstrated the applicability of section 552.139 to its information at issue; therefore, SAO must withhold DPS's information at issue, which we have marked, under section 552.139 of the Government Code.⁷

DSHS states its information relates to computer network security or the design, operation, or defense of a computer network and contains information that can be used to determine how data can be accessed and routed throughout DSHS and where electronic audit and logging data are stored and maintained. DSHS further states access to this information could result in a breach of DSHS systems. Based on DSHS's representations and our review, we find DSHS has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold DSHS's information, which we have marked, under section 552.139 of the Government Code.

The governor's office states its information consists of a computer network vulnerability audit report of its networked computer program, eGrants. The governor's office states the audit assesses the extent to which the eGrants system is vulnerable to unauthorized access or harm, including the extent to which the governor's office stored information is vulnerable to alteration, damage, erasure, or inappropriate use. Based on the governor's office's representations and our review, we find the governor's office has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold the governor's office's information, which we have marked, under section 552.139 of the Government Code.⁸

OAG states some of its information relates to its computer network security and infrastructure and identifies vulnerabilities in the OAG's system. OAG further states release of this information would subject OAG's system to unauthorized access or harm. Based on

⁶As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁷As our ruling is dispositive, we need not address DPS's remaining arguments against disclosure.

⁸As our ruling is dispositive, we need not address the governor's office's remaining argument against disclosure.

OAG's representations and our review, we find OAG has demonstrated the applicability of section 552.139 to the information at issue. Therefore, SAO must withhold OAG's information at issue, which we have marked, under section 552.139 of the Government Code.

TSU states its information consists of reports of audits conducted on computer network systems of component institutes of TSU. TSU further states the reports are assessments of TSU's computer network security and relate to the design, operation, or defense of TSU computer network systems. TSU asserts release of this information could compromise the security and integrity of the systems, potentially causing financial damage, disruption of university business and other operations and processes. Based on TSU's representations and our review, we find TSU has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold TSU's information, which we have marked, under section 552.139 of the Government Code.

TAMU states its information directly relates to computer network security. TAMU states its information addresses vulnerabilities found concerning information technology security practices as it relates to areas of password controls, software patch updates, and user logins. TAMU asserts the release of its information would increase the risk of the networks being compromised, resulting in disruption of services and the potential loss of confidential or mission-critical data. Based on TAMU's representations and our review, we find TAMU has demonstrated the applicability of section 552.139 to its submitted information; therefore, SAO must withhold TAMU's information, which we have marked, under section 552.139 of the Government Code.⁹

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. DPS and DOT raise section 552.101 in conjunction with a provision of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code, for some of the remaining information. Section 418.177 was added to chapter 418 as part of the HSA and provides that information is confidential if it:

- (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.

⁹As our ruling is dispositive, we need not address TAMU's remaining argument against disclosure.

Id. § 418.177. The mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

DPS states its weapons and munitions audit is an assessment for the purpose of ascertaining existing vulnerabilities and risks associated with the storage and security of DPS's weapons and munitions. DPS further states it conducts these types of assessments to prevent and detect unauthorized access by terrorists and other criminal offenders. Based on DPS's representations and our review, we find DPS's remaining information at issue, which we have marked, relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity and is maintained by DPS for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. DOT states some of its information evaluates specific criteria as part of the audit process to address the security and prevention of criminal activity at its facilities. DOT further states the information includes detailed information that shows technical details of particular vulnerabilities of critical infrastructure to an act of terrorism or related criminal activity, including information on the areas reviewed, security control mechanisms, and security risk factors. Based on DOT's representations and our review, we find DOT's information at issue, which we have marked, relates to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity and is maintained by DOT for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, SAO must withhold DPS's and DOT's marked information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.¹⁰

Section 552.101 of the Government Code also encompasses section 66.81 of the Education Code, which states in pertinent part as follows:

- (a) All documents and information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records of the lessee or a third party, as provided by this subchapter, and contracts, agreements, or amendments provided to the board of regents under Section 66.80(a) are confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsections (c) and (d).

¹⁰As our ruling is dispositive, we need not address DPS's or DOT's remaining arguments against disclosure of this information.

This section shall not apply to records or information provided by the lessee under Section 66.77.

...

(d) This section does not prohibit:

...

(5) sharing of documents or information among state agencies pursuant to Section 66.65. Shared documents or information will remain confidential under this section[.]

Educ. Code § 66.81(a), (d)(5). Further, section 66.65 of the Education Code provides in pertinent part as follows:

(b) The members of the [Board for Lease of University Lands (the “board”)], personnel and counsel employed or assigned to assist the board, the board of regents [of UT], staff of [UT], the commissioner and staff of the General Land Office, the board of regents and staff of [TAMU], the [comptroller’s office], the [OAG], and any other agency or official of the state with a reasonable business interest in state or university lands, minerals, or resources may consult with each other and exchange information related to the administration of leases, collection and disposition of royalties, whether in cash or in kind, and any other matter related to the lease, sale, or production of, or the exploration for, oil, gas, or any other mineral or resource, including geothermal, wind, and solar energy on state or university lands. The information so exchanged and consultations and related communications shall be or shall remain confidential and shall be privileged from discovery in the same manner and to the same extent as if the persons consulted, which includes counsel, were members of the same agency

...

Id. § 66.65(b). UT states its remaining information at issue consists of audits conducted to ensure that oil and gas royalty payments were being made appropriately and in accordance with the lease agreements and the board’s rules. UT further states its remaining information at issue was derived from an inspection or examination of books, accounts, reports, or other records of a lessee or a third party. UT also states none of the exceptions outlined under section 66.81(a) apply. Based on these representations, we find UT has demonstrated the information at issue is confidential pursuant to section 66.81(a). Because section 66.65(b) states confidential information exchanged between UT and any other agency or official of the state with a reasonable business interest in state or university lands, minerals,

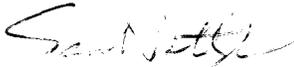
or resources shall remain confidential, we find SAO must withhold UT's remaining information at issue, which we have marked, under section 552.101 of the Government Code in conjunction with section 66.65(b) of the Education Code. *See id.* § 66.65(b); *see also id.* § 66.81(d)(5).

In summary, SAO must withhold the information we have marked under section 552.139 of the Government Code. SAO must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code and section 66.65(b) of the Education Code. SAO 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



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SN/tch

Ref: ID# 494368

Enc. Submitted documents

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