



October 8, 2002

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2002-5701

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170417.

The Bexar County District Attorney (the "county") received a request for "a detailed listing of [the county's] inventoried items/equipment," to include the following information: supercomputers, mainframe computers and peripherals, minicomputers and servers, desktop CPUs, printers, image scanners, LAN/WAN switching - hubs, routers, switches, computer equipment racks, shelving and chassis, portable CPUs, purchased software, internally developed software if available, customized software if available, enterprise software, PBX, KSU, voicemail and phone system, and photocopying equipment. For each of these items, the requestor seeks the description of the item including product make and model, asset category or code, date item was received, amount paid/ cost, and the company from which the item was purchased. Finally, the requestor seeks the information in electronic format (spreadsheet or data file). You claim that the requested information is excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note that you state that the county does not have detailed inventory listings for image scanners, shelving racks, photocopying equipment, and supercomputers. The Public Information Act does not require the governmental body to prepare new information in response to a request. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex.App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). You have, however, submitted to this office Exhibits 2(a) through 2(e) which contain information that is responsive to the request. You argue that much of the information found in the submitted exhibits surpasses the scope of the present request, and that to respond the county would have to prepare a custom-generated report to combine data, which would require significant formatting. In this regard, we note that section 552.231 of the Government Code sets out the procedures a governmental body must follow if responding to a request for information would require programming or manipulation of data. According to section 552.003(2), “‘manipulation’ means the process of modifying, rendering, or decoding of information with human intervention.” A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information, or seek a ruling from this office as to whether the information is excepted from disclosure. *See Fish*, 31 S.W. 3d at 682. A request for public information that requires a governmental body to program or manipulate existing data is not considered a request for the creation of new information. *Id.* Thus, the county’s officer for public information carries the duty of promptly producing such public information when it is requested, unless the city wishes to withhold the information. *Id.* §§ 552.203, .221.

As you timely submitted a request for a ruling as to whether the requested information is excepted from disclosure, we will address your arguments. Section 552.136 of the Government Code is entitled “Government Information Related to Security Issues for Computers” and provides in pertinent part:

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

Gov't Code § 552.136.

Although you provide arguments that the release of certain computer infrastructure information might jeopardize the security of the county's computer systems,⁴ we find that you have not specifically demonstrated how release of the information you have submitted to this office would cause such a result. Nor do we otherwise find that this information is related to the security of the county's computers for purposes of section 552.136. Therefore, we find that the submitted information may not be withheld under section 552.136.

Next, we address your argument under section 552.101 of the Government Code.² Under section 552.101, this office has determined that information may be withheld from public disclosure in special circumstances. *See* Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause an imminent threat of harm. *Id.* at 6. An assertion of a generalized and speculative fear of harm does not satisfy the "special circumstances" standard. *Id.* This office further noted that the initial determination of the existence of an imminent threat of harm should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* at 7.

After reviewing the information at issue, we conclude that you have not established that release of this information would likely cause an imminent threat of harm. Thus, because you have not demonstrated "special circumstances," you may not withhold the submitted information under section 552.101. As you raise no other exceptions to disclosure, the requested information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* §

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 170417

Enc. Submitted documents

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