



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2005

Mr. Clay T. Grover
Feldman & Rogers, LLP
5718 Westheimer, Suite 1200
Houston, TX 77057

OR2005-03711

Dear Mr. Grover:

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# 223020.

The Fort Bend Independent School District (the "district"), which you represent, received a request for the computer network security audit dated December 1, 2004. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.139 of the Government Code provides as follows:

(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, or 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 § 552.139. You argue that the submitted information consists of a report on computer network vulnerability and is an assessment of its network's vulnerability to unauthorized access or harm. Upon review of the submitted information, we find that a portion of the information you have marked constitutes an assessment as contemplated by section 552.139(b). Accordingly, the information we have marked must be withheld under section 552.139 of the Government Code. For the remaining submitted information, we address your arguments under section 418.177 and 418.181 of the Government Code.

You claim that the remaining submitted information may be confidential pursuant to sections 418.177 and 418.181 of the Government Code. Section 418.177 provides:

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.

Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Gov't Code §§ 418.177, .181. Upon review of your comments, we find that you have failed to adequately explain how any of the remaining submitted information falls within the scope of sections 418.177 or 418.181 of the Government Code. We therefore determine that the district may not withhold any of the remaining submitted information under section 552.101 in conjunction with any of the provisions of the Texas Homeland Security Act.

In summary, the information that you have marked must be withheld under section 552.139. The remaining information must be released.

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.* § 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

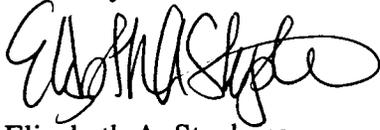
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Elizabeth A. Stephens". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#223020

Enc. Submitted documents

c: Mr. Lewis W. Smith
3414 Kiamesha Court
Missouri City, TX 77459
(w/o enclosures)