



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2006

Ms. Renée Mauzy  
General Counsel  
Texas Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564

OR2006-09045

Dear Ms. Mauzy:

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# 256367.

The Texas Department of Information Resources (the "DIR") received a request for electronic copies of the planned procurement schedules that were submitted to the DIR by March 31, 2006. You state that the DIR has released its own planned procurement schedule but note that the remaining requested information may be excepted from disclosure under section 552.139 of the Government Code. Although you make no arguments and take no position as to whether the submitted information is excepted from disclosure, you provide documentation showing that you notified the interested third parties<sup>1</sup> of the request and of each agency's right to submit arguments to this office as to why the submitted information should not be released. *See* Govt Code § 552.304 (interested third party may submit comments explaining why submitted information should or should not be released). We have received comments from the Texas State Board of Pharmacy (the "board"), the Texas Alcoholic Beverage Commission (the "commission"), the Office of Court Administration (the "office"), and the Secretary of State (the "secretary"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that as of the date of this letter, only the board, commission, office, and secretary have submitted to this office reasons explaining why the DIR should not release their information. The remaining third parties failed to submit comments explaining the applicability of section 552.139 to any of their information. Therefore, these third parties

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<sup>1</sup>The documentation provided to this office reflects that third party notice was sent to "[a]ll state [a]gencies that submitted Planned Procurement Schedules by March 31, 2006."

have provided us with no basis to conclude that they have a protected interest in any of the submitted information that pertains to them, and this information may not be withheld on the basis of section 552.139.

The board, commission, office, secretary all raise section 552.139 of the Government Code. Section 552.139 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. Upon review of the submitted arguments, we agree that a portion of the information at issue, which we have marked, relates to computer network security or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Therefore, the DIR must withhold the information we have marked under section 552.139(a) of the Government Code. However, we find that board, commission, office, and secretary have not demonstrated that the remaining information relates to computer network security or the design, operation, or defense of a computer network, or consists of a computer network vulnerability assessment or report as contemplated in section 552.139(b). Consequently, none of the remaining information is excepted from disclosure under section 552.139.

In summary, the DIR must withhold the information we have marked under section 552.139 of the Government Code. 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); *Texas 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 Office of the Attorney General 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. 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,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/eb

Ref: ID# 256367

Enc. Submitted documents

c: Ms. Susan Tennison  
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(w/o enclosures)