



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-12538

Dear Ms. Smith:

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# 354521 (OR 09-1214).

The Texas Public Safety Commission and the Texas Department of Public Safety (collectively the "department") received separate requests from the same requestor for four categories of information relating to certain items on the commission's public agenda for its meeting of May 22, 2009. You state that the department has no information responsive to item 4 of the requests.¹ You state that information responsive to items 2 and 3 of the requests either has been or will be released. You claim that information responsive to item 1 of the requests is excepted from disclosure under section 552.139 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

As recently amended by the 81st Legislature, section 552.139 of the Government Code provides as follows:

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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.

(c) Notwithstanding the confidential nature of the information described in this section, the information may be disclosed to a bidder if the governmental body determines that providing the information is necessary for the bidder to provide an accurate bid. A disclosure under this subsection is not a voluntary disclosure for purposes of Section 552.007 [of the Government Code].

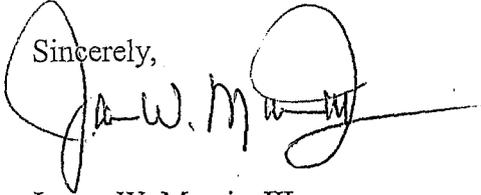
Act of May 28, 2001, 77th Leg., R.S., ch. 1272, § 4.03, 2001 Tex. Gen. Laws 3049, 3057–58, amended by Act of May 14, 2009, 81st Leg., R.S., ch. 183, § 4, 2009 Tex. Sess. Law Serv. (Vernon) 528, 529–30. You state that the submitted report addresses the department's response to the discovery of the "Conficker worm" in the department's computer system. You contend that the submitted information relates to the security of the department's computer network. You also contend that the information constitutes a computer network vulnerability report. Based on your representations and our review of the information at issue, we conclude that the department must withhold the submitted information in its entirety under section 552.139 of the Government Code.

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, 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 "James W. Morris, III". The signature is written in a cursive style with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 354521

Enc: Submitted documents

c: Requestor
(w/o enclosures)