



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2009

Mr. Erick T. Dahler  
General Counsel  
Alamo Colleges  
201 West Sheridan, Building C-8  
San Antonio, Texas 78204-1429

OR2009-14518

Dear Mr. Dahler:

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# 358419.

The Alamo Colleges (the "college") received a request for computer files from the personal folder of the requestor. You state you are releasing some of the requested information to the requestor. You claim that some of the submitted information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered your submitted arguments and reviewed the submitted information, a portion of which is a representative sample.<sup>1</sup>

You claim that the files listed within Exhibit 2 are not public information under the Act. We note the Act is applicable only to "public information." *See Gov't Code § 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:

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<sup>1</sup>We 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.

(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. In Open Records Decision No. 581 (1990), this office determined that certain computer-related information that had no significance other than its use as a tool for the maintenance, manipulation, or protection of public property was not the kind of information that is made public under section 552.021 of the Act. Open Records Decision No. 581 (1990). You state the files at issue consist of “operating system setup, installation, and executable files which are only producible in electronic format.” You assert that this information has no significance other than its use as a tool for the maintenance, manipulation, or protection of college property. Based on your representations, we conclude the files listed within Exhibit 2 are not public information as defined by section 552.002 of the Government Code. Therefore, this information is not subject to disclosure under the Act and the college need not release the information at issue in response to the present request for information.<sup>2</sup>

We must next address the college’s obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for the attorney general’s decision and state the exceptions that apply not later than the tenth business day after receiving the request. Gov’t Code § 552.301(b). You state the college received the request for information on July 23, 2009. Accordingly, the ten business-day deadline was August 6, 2009. However, you did not request a decision from this office until August 7, 2009. Consequently, we find the college failed to comply with the requirements of section 552.301 in requesting the decision from our office. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption that the requested information is public. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason as to why the information should not be disclosed. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.139 of the Government Code can provide a compelling reason to withhold information, we will address your argument under this exception.

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<sup>2</sup>As our ruling is dispositive with regard to this portion of the submitted information, we need not address your argument under section 552.101.

You raise section 552.139 of the Government Code for the e-mails submitted as Exhibit 4. Section 552.139 of the Government Code provides in pertinent part:

(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(a)-(b). 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). You assert that Exhibit 4 contains information "regarding network configurations, troubleshooting, passwords, and other security sensitive information." We note section 2059.055(b)(1) only applies to components of the security system of a state agency. Sections 2059.001(4) and 2151.002(1) of the Government Code, when read together, provide that the term "state agency" in this context means "a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute." *See id.* §§ 2059.001(4), 2151.002(1).

You have not explained how the e-mails at issue are related to the security system of a state agency as defined above. You also do not explain how these e-mails were collected, assembled, or maintained to prevent, detect, or investigate criminal activity, or are related to an assessment of the vulnerability of a network to criminal activity. Thus, we find that Exhibit 4 does not constitute confidential network security information as described in section 2059.055.

You contend that Exhibit 4 contains information that "relate[s] to computer network security, design, and operation." However, you have not demonstrated how the e-mails at issue relate to the design, operation, or defense of the system's computer network as contemplated in section 552.139(a). Furthermore, these e-mails are not a computer network vulnerability assessment or report as contemplated in section 552.139(b). Consequently, you have failed to demonstrate the applicability of section 552.139 to Exhibit 4.

In summary, Exhibit 2 is not subject to disclosure under the Act and need not be released. As you raise no further argument against disclosure of Exhibit 4, it must be released.

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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 358419

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)