



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2009

Mr. Reg Hargrove  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2009-15138

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 360391.

The Office of the Attorney General (the "OAG") received a request for the August 13, 2009 letter from the Department of Information Resources (the "department") to IBM. The OAG does not object to release of the letter. However, because the department objects to release of the letter, the OAG submits this request for a decision to allow the department to submit its arguments as to why the information is excepted from disclosure. The department asserts the information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the department's arguments and have reviewed the submitted information.

The department contends the letter is confidential under section 552.101 of the Government Code in conjunction with the provisions contained in a master services agreement between the department and IBM. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The department explains the subject matter of the letter relates to issues that are to be resolved by IBM and the department using a confidential informal dispute resolution process specified in the master services agreement. In addition, the agreement

provides for how information should be shared between the two parties. However, section 552.101 excepts from disclosure information made confidential by other statutes, the constitution, or judicial decisions. The agreement is not a statute, the constitution, or a judicial decision. Moreover, information is not confidential under the Public Information Act (the "Act") simply because the party that submitted the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See Attorney General Opinion JM-672* (1987); *Open Records Decision Nos. 541 at 3* (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Therefore, the letter is not confidential under section 552.101 of the Government Code.

Next, the department asserts the letter is excepted from disclosure under section 552.139(b)(2) of the Government Code. As recently amended by the 81<sup>st</sup> Legislature, section 552.139 provides in part as follows:

(b) The following information is confidential:

...

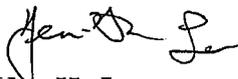
(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent 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(b). After review of the department's brief, we find the department makes no arguments as to the applicability of section 552.139(b)(2) and has not demonstrated the letter consists of an assessment of vulnerability to its computer network, system, system interface, or electronically stored information. Consequently, the information is not excepted under section 552.139(b)(2) of the Government Code. Thus, the OAG must release the August 13, 2009 letter from the department to IBM.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 360391

Enc: Submitted document

c: Requestor  
(w/o enclosure)

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