



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2012

Mr. Chad J. Lersch  
Assistant General Counsel  
Texas Department of Information Resources  
P.O. Box 13564  
Austin, Texas 78711-3564

OR2012-06303

Dear Mr. Lersch:

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# 452248.

The Texas Department of Information Resources (the "department") received a request for copies of the proposals, including best and final offers, submitted by two named companies in relation to two awarded contracts. You state the department has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.110 and 552.139 of the Government Code. You also believe release of the submitted information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the department notified ACS State & Local Solutions, Inc. ("ACS"), and Capgemini America, Inc. ("Capgemini"), of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances) We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.110 of the Government Code for the submitted information. However, section 552.110 is designed to protect the interests of third parties, not the interests of a

governmental body. As such, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable. An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from ACS or Capgemini explaining why their information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate these third parties' interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that the department may not withhold any of the submitted information on the basis of any interest ACS or Capgemini may have in the information.

You also raise section 552.139 of the Government Code for Attachments 7-B and 12-A in Exhibits B and C. Section 552.139 provides:

(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. 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 state the information at issue contains the physical addresses of State of Texas (the “state”) computer facilities and “specific software that runs on certain mainframes and services within the [s]tate’s data network.” You explain that the release of this information could subject the state’s information resources to attack or unauthorized access, which “could subject the [s]tate’s electronically stored information to alteration, damage, or erasure.” Based on your representations and our review, we find some of the information at issue falls within the scope of section 552.139. As such, we conclude the department must withhold this information, which we have marked, under section 552.139 of the Government Code. However, we find you have failed to demonstrate the remaining information for which you raise section 552.139 relates to computer network security, the design, operation, or defense of the department’s computer network, or an assessment of the department’s computer network vulnerabilities. Consequently, none of the remaining information in Attachments 7-B and 12-A in Exhibits B and C may be withheld under section 552.139.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold the information we have marked under section 552.139 of the Government Code. The department must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 452248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

ACS State & Local Solutions, Inc.  
Attention: Legal Department  
8260 Willow Oaks Corporate Drive  
Fairfax, Virginia 22031  
(w/o enclosures)

Mr. Mark Stein  
Capgemini America, Inc.  
Las Colinas Tower, Suite 700  
201 East John Carpenter Freeway  
Irving, Texas 75062  
(w/o enclosures)