



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2013

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2013-14534

Dear Ms. Fleming:

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# 495505.

The Texas Department of Criminal Justice (the "department") received a request for the current Security Threat Group plan, including attachments, and the Security Threat Group operations manual. You state you will release some of the requested information to the requestor. You claim that the submitted information is either not subject to the Act or is excepted from disclosure under section 552.139 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You contend the submitted information is not public information subject to the Act. The Act is applicable only to "public information." *See id.* §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of the following:

[I]nformation that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(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(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). However, in Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code.

You explain the submitted manual pages describe "the primary data information, the source codes and the specified fields comprising the [Texas Anti-Gang Information Tracking "TAGIT"] System." However, we find the submitted manual pages are maintained by the department in connection with the transaction of official department business and has significance other than as a tool for the maintenance, manipulation, or protection of public property. Accordingly, the submitted information is subject to the Act and may be withheld only if it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.301, .302.

Next, we note, and you acknowledge, the department did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *Id.* § 552.301(b). The department did not raise section 552.139 of the Government Code until after the ten-business-day deadline had passed. Generally, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.139 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider this argument for the submitted information.

Section 552.139 of the Government Code 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 submitted information “provides the key for understanding the [TAGIT] System database” by, as previously noted, “describing the primary data information, the source codes and the specified fields comprising the TAGIT System.” Further, you assert the release of the manual pages at issue “could be used as a tool to manipulate access and entry into the database and thereby compromise the security of the TAGIT System.” Based on your representations and our review, we find you have demonstrated the submitted information relates to computer network security, and the design, operation, or defense of the department's computer network. Accordingly, the department must withhold the submitted information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large, stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 495505

Enc. Submitted documents

c: Requestor
(w/o enclosures)