



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 23, 2014

Mr. Chad Lersch
Public Information Officer
Texas Department of Information Resources
P.O. Box 13564
Austin, Texas 78711-3564

OR2014-23328

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# 546015.

The Texas Department of Information Resources (the "department") received a request for all Quality Assurance Team ("QAT") and Texas Project Delivery Framework business cases and project plans submitted to the department by a Texas state agency during a specified time period. Although the department takes no position on whether the submitted information is excepted from disclosure, you state its release may implicate the interests of certain governmental bodies.¹ Accordingly, we understand you have notified these governmental bodies of the request pursuant to section 552.304 of the Government Code. *See Gov't Code*

¹We understand the department notified the following governmental bodies pursuant to section 552.304: the Office of the Attorney General of Texas ("OAG"), the Teacher Retirement System of Texas, the Texas Commission on Environmental Quality, the Texas Commission on State Emergency Communications ("CSEC"), the Texas Comptroller of Public Accounts, the Texas Department of Aging and Disability Services ("DADS"), the Texas Department of Criminal Justice, the Texas Department of Family and Protective Services ("DFPS"), the Texas Department of Health and Human Services, the Texas Department of Insurance, the Texas Department of Motor Vehicles ("DMV"), the Texas Department of Public Safety, the Texas Department of State Health Services, the Texas Department of Transportation, the Texas Education Agency (the "TEA"), the Texas Ethics Commission, The Texas Legislative Budget Board, the Texas Legislative Council, the Texas Lottery Commission ("TLC"), the Texas Railroad Commission, the Texas Secretary of State, the Texas State Auditor's Office, the Texas State Library and Archives Commission ("TSLAC"), the Texas State Office of Administrative Hearings ("SOAH"), and the Texas Workforce Commission.

§ 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from OAG, CSEC, DADS, DFPS, DMV, TEA, TLC, TSLAC, and SOAH. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it was created outside of the time period specified in the request. This ruling does not address the public availability of any information not responsive to the present request, and the department need not release non-responsive information in response to this request.

Next, the department and TLC assert the department is not responsible for releasing the responsive information. TLC asserts it submitted its information at issue to the QAT, which is comprised of representatives from the department, the Legislative Budget Board, and the State Auditor's Office, as opposed to the department. TLC further contends the QAT is a separate and distinct governmental entity. As such, the department and TLC argue that while the department has physical custody of the responsive information, the department is merely holding the information for the proper legal custodians of the information. The department contends the proper legal custodians are the governmental bodies that submitted the information at issue, while TLC contends the QAT is the proper legal custodian of the responsive information. Accordingly, the department and TLC assert the instant request for information was improperly submitted to the department, and, thus, the department is not responsible for responding to the present request.

We note the Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

Id. § 552.002(a), (a-1), (a-2). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In this instance, we note the department itself received the present request, and the department had possession of the requested information by virtue of its status as a member of the QAT, whose function is to review and approve major information resources projects. See generally Gov't Code §§ 2054.1181, 2054.158. Further, the department subsequently sent the responsive information to this office in response to the request and sought a ruling. See Open Records Decision No. 561 (1990) (governmental body has duty to make good-faith effort to relate request for information to information it holds). Therefore, we find the information at issue was written, produced, collected, assembled, or maintained in connection with the transaction of official business by representatives of the department in their official capacities. Accordingly, we determine the department must release the submitted information unless it is excepted from disclosure under the Act.

Next, we note CSEC, DADS, and SOAH each seek to withhold responsive information the department did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. See Open Records Decision No. 592 at 8 (1991)

(statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

CSEC, DADS, DFPS, DMV, TEA, and TSLAC state all or portions of their respective information is part of ongoing procurement processes for which no contracts have been awarded. Each contends release of this information would give bidders a competitive advantage and would harm each governmental body's ability to obtain the lowest price and most favorable terms possible. Based on these representations and our review, we find the CSEC, DADS, DFPS, DMV, TEA, and TSLAC have demonstrated release of their respective responsive information at issue could harm their interests in a particular competitive situation. Accordingly, we conclude the department may withhold the types of responsive information we have indicated with respect to DADS, in addition to the entirety of the responsive information of CSEC, DFPS, DMV, TEA, and TSLAC, under section 552.104 of the Government Code.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

OAG and TLC contend portions of their responsive information are protected under section 552.139 of the Government Code. Section 552.139 provides, in 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

²As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

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)(1)–(2). Section 2059.055 of the Government Code provides in 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). Upon review, with respect to OAG's responsive information, we find the department must withhold the types of information we have indicated under section 552.139 of the Government Code. However, we find TLC has not demonstrated how any of its information relates to computer network security, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Further, we find TLC failed to explain how any of its information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the department may not withhold any of the remaining responsive information under section 552.139 of the Government Code.

In summary, the department may withhold the types of responsive information we have indicated with respect to DADS, in addition to the entirety of the responsive information of CSEC, DFPS, DMV, TEA, and TSLAC, under section 552.104 of the Government Code. With respect to OAG's responsive information, we find the department must withhold the types of information we have indicated under section 552.139 of the Government Code. The department must release the remaining responsive information.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 546015

Enc. Submitted documents

c: Requestor
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