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ATTORNEY GENERAL OF TEXAS

May 28, 2015

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2015-10430

Dear Mr. Ramirez:

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# 567229.

The Lower Colorado River Authority (the "authority") received a request for four categories of information pertaining to cyber security for a specified period of time.¹ You state the authority does not have information responsive to three of the requested categories of information.² You claim the submitted information is excepted from disclosure under

¹We note the authority sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

sections 552.101, 552.111, and 552.139 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it pertains to information that was created after the date of the request. This ruling does not address the public availability of any information that is not responsive to the request and the authority is not required to release such information in response to this request.

Next, we note some of the submitted responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The responsive information includes completed reports that are subject to section 552.022(a)(1). The authority must release the completed reports pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although the authority raises section 552.111 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver).* Therefore, the authority may not withhold any of the information subject to section 552.022 under section 552.111. However, the authority raises sections 552.101 and 552.139 of the Government Code. Sections 552.101 and 552.139 make information confidential for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the information subject to section 552.022. We will also consider your argument under section 552.111 for the information not subject to section 552.022.

³Although you also raise sections 552.107 and 552.133 for the submitted information, you provide no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume you no longer assert these exceptions. *See Gov't Code §§ 552.301, .302.*

⁴We assume 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.

Section 552.139 of the Government Code 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 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.

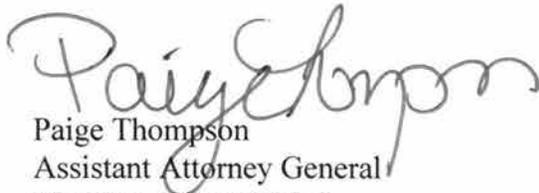
Id. § 2059.055(b). The authority contends the responsive information details vulnerabilities of computer network and system security that protects the authority's critical infrastructure and critical infrastructure operations. The authority explains the responsive information either relates to analyses, reviews, evaluations, and recommendations to prevent, detect, or investigate criminal activity or relates to an assessment of the vulnerability of a network to criminal activity. Based on the authority's representations and our review of the information,

we conclude the authority must withhold the responsive information under section 552.139 of the Government Code.⁵

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 567229

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive, we need not address the authority's remaining arguments against disclosure of the information.