



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 10, 2015

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2015-18874

Dear Ms. Cost:

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# 578991 (ORR# 15-2724).

The Texas Department of Public Safety (the "department") received a request for information pertaining to outages of the department's vehicle inspection computer system during a specified time period.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of NIC, Inc. ("NIC"). Accordingly, you state, and provide documentation showing, you notified NIC of the request for information and of its right to submit arguments to this office as to why the

---

<sup>1</sup>You state the department 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information and the submitted arguments.

Initially, you state some of the submitted information is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by section 2059.055 of the Government Code. We note section 552.139 encompasses restricted information made confidential by section 2059.055. *Id.* § 552.139(a). Thus, we will address the department's arguments under these provisions together. 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 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[.]

*Id.* § 2059.055(b)(1). You argue “[t]he marked portions of the submitted records provide the location of data centers utilized by the [d]epartment through use of” the department’s website, “the applications implicated by outages at those data centers, and names of companies utilized by” the department’s website “to provide these services.” You argue release of this information “could subject the state’s information resources to attack or unauthorized access, which could subject the [d]epartment’s electronically stored information . . . to alteration, damage, or erasure.” Upon review, we find you have not demonstrated the information you marked relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the department’s computer network as contemplated in section 552.139(a) of the Government Code. We further find you have not demonstrated the information at issue consists of a network vulnerability report for purposes of section 552.139(b)(1) or consists of an assessment as contemplated by section 552.139(b)(2) of the Government Code. Accordingly, the department may not withhold any of the information at issue under section 552.139 of the Government Code or under section 552.101 of the Government Code in conjunction with section 2059.055 of the Government Code.

Next, we note 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 information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from NIC explaining why the submitted information should not be released. Therefore, we have no basis to conclude NIC has a protected proprietary interest in the submitted information. *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, the department may not withhold the submitted information on the basis of any proprietary interest NIC may have in the information. Thus, the department must release the submitted 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](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 cursive script that reads "Claire Morris Sloan". The signature is written in black ink and is positioned above the typed name.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 578991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Kate Haynes  
Associate General Counsel  
NIC, Inc.  
25501 West Valley Parkway, Suite 300  
Olathe, Kansas 66061  
(w/o enclosures)