



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 18, 2015

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody Street, Fifth Floor
Galveston, Texas 77550

OR2015-19600

Dear Ms. Reingold:

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# 579661.

Galveston County (the "county") received a request for correspondence between the county's project manager and SunGard Public Sector, Inc. ("SunGard") during a specified time period pertaining to the county's agreement with SunGard for the installation of OneSolution software.¹ We understand the county will redact social security numbers pursuant to section 552.147(b) of the Government Code.² You claim some of the submitted information is not subject to the Act. Alternatively, you claim some of the submitted information is

¹We note the county 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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). You inform us you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor, in response, on June 26, 2015, again narrowed the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

excepted from disclosure under sections 552.101, 552.102, 552.136, and 552.139 of the Government Code. In addition, you state release of this information may implicate the proprietary interests of SunGard. Accordingly, you state, and provide documentation showing, you notified SunGard of the request for information and of its right to submit arguments to this office as to why the information at issue 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).* SunGard has submitted arguments. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).* We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the county has submitted information not responsive to the clarified request, which we have indicated. This ruling does not address the public availability of non-responsive information, and the county need not release non-responsive information in response to the present request. We also note the county has not submitted some of the information responsive to the clarified request. We assume, to the extent any information responsive to the remainder of the request existed on the date the county received the clarified request, the county has released it. If the county has not released any such information, it must do so at this time. *See id. §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

You contend some of the submitted information is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code 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; or
- (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.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). This office has determined 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. *See* Open Records Decision No. 581 (1990).

You assert the information you have marked has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property. Having considered your arguments and reviewed the information at issue, we find the information you have marked is maintained by the county 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 information at issue 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 SunGard objects to the disclosure of information the county has not submitted to this office for review. This ruling does not address information that was not submitted by the county and is limited to the information submitted as responsive by the county. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

SunGard argues some of the submitted information is subject to section 552.104(a) of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, a private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at *9.

SunGard states it has competitors. In addition, SunGard states release of the information at issue would reveal to SunGard's competitors its "source, codes, scripts, and other proprietary information," as well as how SunGard prices its products and services. SunGard asserts knowledge of the information at issue would be used by its competitors against SunGard in

bidding on similar future government contracts. SunGard states the resulting advantage that a competitor would gain in connection with future competitive procurement is substantial.

For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 2015 WL 3854264, at *1, *8. After review of the information at issue and consideration of the arguments, we find SunGard has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we have indicated under section 552.104(a) of the Government Code.³

Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the county must withhold the conference call access code you have marked under section 552.136 of the Government Code.

You seek to withhold portions of the remaining responsive information under section 552.139 of the Government Code, which provides, in relevant 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.

³As we reach this conclusion, we need not address the remaining arguments against disclosure of this information.

Id. § 552.139(a). 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). You assert the marked information “reveals detailed software and database/databank information.” Upon review, we find the county has demonstrated some of the information at issue relates to the design or operation of a computer system that is subject to section 552.139(a). However, we find you have not demonstrated the remaining information at issue relates to computer network security, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Accordingly, the county must withhold only the information we have indicated under section 552.139(a) of the Government Code.⁴

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. This section encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key

⁴As we make this determination, we need not address the county’s remaining argument against disclosure of this information.

terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You contend some of the remaining information consists of “detailed software and database/databank information . . . vital to the continued security, governance, and continued functioning” of the county. Upon review, however, we find you have failed to demonstrate the remaining information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Consequently, the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

In summary, the county may withhold the information we have indicated under section 552.104(a) of the Government Code. The county must withhold the conference call access code you have marked under section 552.136 of the Government Code and the information we have indicated under section 552.139 of the Government Code. The county 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 579661

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Lori Fixley Winland
Counsel for SunGard Public Sector, Inc.
Locke Lord, L.L.P.
600 Congress, Suite 2200
Austin, Texas 78701
(w/o enclosures)