



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2015

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

OR2015-20498

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# 581638 (PIR# 15-3378).

The Texas Department of Public Safety (the "department") received a request for copies of specified audit reports prepared by the Chief Auditor's Office. You indicate the department will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed 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(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;
- (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 explain audit report numbers 13-05, 14-01, 14-04, and 14-20 discuss vulnerabilities in several of the department's information technology ("IT") areas and include assessments of the extent to which various IT programs and systems are vulnerable to alteration, damage, erasure, and/or inappropriate use. Upon review, we find you have demonstrated the applicability of section 552.139 to the audit reports at issue. Accordingly, the department must withhold these four audit reports under section 552.139 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential, including section 418.177 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.177 provides in relevant part:

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may generally be related to a governmental body's security concerns or emergency preparedness does not make the information per se confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain the remaining audit reports consist of assessments of critical infrastructure made for the purpose of ascertaining the existing vulnerabilities and risks in the department's weapons and munitions storage areas, driver's license offices, driver's license processes, and employee background check investigations. You further explain the assessments highlight vulnerabilities and security gaps in these areas, and the assessments were conducted to prevent and detect unauthorized access by terrorists and other criminal offenders. Upon review, we find you have demonstrated some of the information relates to an assessment for the department of the risk or vulnerability of persons or property to an act of terrorism or related activity and is maintained by the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the department must withhold audit report numbers 13-04, 14-02(b), and 14-10 under section 552.101 in conjunction with section 418.177 of the Government Code.<sup>2</sup> However, we find you have failed to demonstrate audit report number 13-07 relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for the purposes of section 418.177. Thus, you have not demonstrated the applicability of section 418.177 to audit report number 13-07 and we conclude the department may not withhold the report under section 552.101 in conjunction with section 418.177.

Finally, we address your argument under section 552.108(b)(1) of the Government Code for audit report number 13-07. Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision Number 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend audit report number 13-07 contains law enforcement sensitive information. Upon review, however, we find you have failed to demonstrate how the release of audit report number 13-07 would interfere with law enforcement or crime prevention. Consequently, the department may not withhold audit report number 13-07 under section 552.108(b)(1).

In summary, the department must withhold audit report numbers 13-05, 14-01, 14-04, and 14-20 under section 552.139 of the Government Code. The department must withhold audit report numbers 13-04, 14-02(b), and 14-10 under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The department must release audit report number 13-07 in its entirety.

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 cursive script that reads "Nicole Thomas".

Nicole Thomas  
Assistant Attorney General  
Open Records Division

NT/eb

Ref: ID# 581638

Enc. Submitted documents

c: Requestor  
(w/o enclosures)