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ATTORNEY GENERAL OF TEXAS

May 3, 2016

Ms. Angie A. Welborn
Senior Legal Counsel
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

OR2016-09908

Dear Ms. Welborn:

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# 608307.

The State Auditor's Office (the "SAO") received a request for a copy of certain audits listed in a specified report. You state you have provided some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the interests of the Employees Retirement System of Texas ("ERS"), the Texas General Land Office (the "GLO"), the Health & Human Services Commission ("HHSC"), the Teacher Retirement System of Texas ("TRS"), and the Texas Lottery Commission ("TLC"). Accordingly, you state you notified the third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). Further, we note TRS states release of the submitted information may implicate the proprietary interests of Myers and Stauffer, L.C. ("Myers"). Accordingly, TRS states it notified Myers of the request for information and of its right to submit arguments to this office as to why the 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 received comments from the GLO, HHSC, TRS, and TLC. We have considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating

to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from ERS or Myers. Thus, neither ERS or Myers has demonstrated it has protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)-(b); 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. Consequently, the SAO may not withhold any of the submitted information on the basis of any proprietary interests ERS or Myers may have in the information.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 466.022(b) of the Government Code, which provides “security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery” are confidential and exempt from disclosure. *Id.* § 466.022(b)(1). TLC states its information includes security improvement procedures that, if released, would compromise lottery games and threaten the integrity and security of the operation of the lottery. Based on these representations, we find the SAO must withhold TLC's information under section 552.101 of the Government Code in conjunction with section 466.022(b) of the Government Code.¹

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The GLO states it has specific marketplace interests in the information at issue because the GLO is competing in the electrical energy marketplace. In addition, the GLO states the information it has marked contains its business strategies, pricing formulas and structures, and customer information. The GLO states release of this information would cause specific harm to the GLO and place it at a competitive disadvantage when making future bids in the marketplace. After review of the information at issue and consideration of the arguments, we find the GLO has established the release of the information it has marked would give advantage to a competitor or bidder. Thus, we conclude the SAO may withhold the information the GLO marked under section 552.104(a) of the Government Code.²

¹As our ruling is dispositive, we need not address TLC's remaining argument against disclosure of this information.

²As our ruling is dispositive, we need not address the GLO's remaining argument against disclosure of this information.

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). HHSC and TRS each argue some of their information is excepted from disclosure under section 552.139. HHSC states its information at issue pertains to HHSC's Texas Integrated Eligibility Redesign System ("TIERS") and a risk assessment contract. HHSC contends the information at issue details potential passwords and database issues in TIERS, as well as potential issues with HHSC's databases and information technology systems that could allow an individual to breach the system and obtain confidential information. Further, HHSC states release of this information would make HHSC's systems

and database vulnerable to unauthorized access and harm. Based on HHSC's representations and our review, we find HHSC has demonstrated the applicability of section 552.139 to the information at issue.

TRS states its information at issue pertains to the SharePoint browser based platform connected to TRS' computer network via TRS' intranet. TRS informs us portions of its information assess the design, operation, and defense of SharePoint. TRS states release of the information it has marked would reveal the computer and network vulnerabilities found in TRS' administration of SharePoint, allowing a hacker or other unauthorized user to exploit those vulnerabilities and gain access to confidential and other sensitive data maintained in TRS' computers, programs, and systems. Therefore, the SAO must withhold the information HHSC and TRS have marked under section 552.139 of the Government Code.³

In summary, the SAO must withhold TLC's information under section 552.101 of the Government Code in conjunction with section 466.022(b) of the Government Code. The SAO may withhold the information the GLO marked under section 552.104(a) of the Government Code. The SAO must withhold the information HHSC and TRS have marked under section 552.139 of the Government Code. The remaining information must be released.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/dls

³As our ruling is dispositive, we need not address HHSC's remaining argument against disclosure.

Ref: ID# 608307

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)