



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2017

Ms. Lindsey Wolf
General Counsel
The Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2697

OR2017-00467

Dear Ms. Wolf:

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# 640635.

The Office of the Secretary of State (the "secretary's office") received a request for the secretary's office's cost estimate justification for a list of registered voters.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.139 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹You state the secretary's office sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (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).

²Although you also raise section 552.101 of the Government Code in conjunction with sections 552.104 and 552.110 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision No. 676 at 1-2 (2002).

The secretary's office states some of the submitted information was derived from the Texas Office of the Comptroller's Uniform Statewide Accounting System ("USAS") and raises section 552.101 of the Government Code for this information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Although you state the secretary's office understands that financial information in the USAS may be withheld from disclosure, you do not direct our attention to any law, nor are we aware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 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). You assert some of the submitted information is protected under section 552.104(a). However, upon review, we find you have failed to demonstrate any portion of the information at issue would give advantage to a competitor or bidder. Accordingly, the secretary's office may not withhold any of the information at issue under section 552.104(a) of the Government Code.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Although the secretary's office argues some of the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the secretary's office's argument under section 552.110 of the Government Code.

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 assert the information you have marked pertains to technical details of the secretary's office's computer system and relates to the design and operation of the secretary's office's computer system. Based on your representations and our review, we conclude the secretary's office must withhold the information we have marked under section 552.139 of the Government Code. However, we find you have failed to demonstrate any of the remaining information at issue relates to computer network security, to restricted information under section 2059.055, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Further, we find you have failed to demonstrate any of the remaining information at issue consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Consequently, the secretary's office may not withhold any of the remaining information at issue under section 552.139 of the Government Code.

In summary, the secretary's office must withhold the information we have marked under section 552.139 of the Government Code. The secretary's office must release the remaining 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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 640635

Enc. Submitted documents

c: Requestor
(w/o enclosures)