



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

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

OR2017-08078A

Dear Ms. Aston:

This office issued Open Records Letter No. 2017-08078 (2017) on April 17, 2017. Since that time, you have made this office aware of new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on April 17, 2017. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 668433.

The Office of the Secretary of State (the "secretary's office") received a request for any "manuals, handbooks, training materials, or other documents" relating a specified process used by county registrars and the secretary's office.¹ You state you will release some information. You claim portions of the submitted information are not subject to the Act. In the alternative, you claim portions of the submitted are excepted from disclosure under

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).

sections 552.104, 552.136, and 552.139 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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

Next, you argue some of the submitted information is not public information subject to disclosure under the Act. The Act is applicable only to "public information." *Id.* §§ 552.002, .021. Section 552.002(a) defines "public information" 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;
- (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.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office 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. Upon review, we find the information at issue has significance other than its use as a tool for the maintenance, manipulation, or protection of public property, and thus constitutes public information under section 552.002 of the Government Code. Therefore, we conclude the information at issue is subject to the

²Although you also raise section 552.101 of the Government Code in conjunction with section 552.104 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your argument under section 552.101.

Act and the secretary's office must release it unless the secretary's office demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. Accordingly, we will consider your arguments against the disclosure of the submitted information.

Section 552.104(a) of the Government Code excepts 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). You assert some of the submitted information is protected under section 552.104(a) because the information is proprietary to the secretary's office. 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 552.139 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[.]

Id. § 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 marked pertains to technical details of the statewide voter registration system (the “system”) and relates to the design and operation of the system. Based on your representations and our review, we conclude the secretary’s office must withhold the information we marked under section 552.139 of the Government Code.³ 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). Additionally, you state some of the information, which we have marked for release, has been determined by the Elections Division of the secretary’s office to not constitute computer security information and is, in fact, subject to public disclosure. 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 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,



Jahanna Ward
Attorney
Open Records Division

JW/som

³As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Ref: ID# 668433

Enc. Submitted documents

c: Requestor
(w/o enclosures)