



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2017

Ms. Myrna S. Reingold  
Attorney  
Galveston County  
722 Moody Avenue, 5th Floor  
Galveston, Texas 77550

OR2017-20480

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# 674390.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for specified communications related to the creation of and need for Galveston County's CANDOR database, excluding certain information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, and 552.139 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

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<sup>1</sup>Although you raise Texas Rule of Civil Procedure 192.5, we note the proper exception to raise when asserting the attorney work product privilege in this instance is section 552.111 of the Government Code. *See* Open Records Decision Nos. 676 at 1-2, 677 (2002). Further, although you also raise section 552.107 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302. We note, and you acknowledge, the district attorney's office did not comply with section 552.301 of the Government Code in requesting this decision with regard to section 552.117 of the Government Code. *See id.* § 552.301(b). Nonetheless, because section 552.117 can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, you inform us some of the submitted information, which you have marked, is not responsive to the instant request for information because it was specifically excluded by the requestor. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to this request.<sup>2</sup>

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You inform us the district attorney's office was a party to pending criminal litigation when it received the instant request for information. Therefore, we agree litigation was pending on the date the district attorney's office received the present request for information. You state the requestor is the defense counsel in the pending litigation and has cross-examined prosecutors concerning the CANDOR database in the litigation. Based on your representations, and our review, we agree, the information at issue is related to the pending litigation for purposes of section 552.103(a). Accordingly, we conclude the district

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<sup>2</sup>As we are able to make this determination, we need not consider your arguments against disclosure of this information.

attorney's office may withhold the responsive information you marked under section 552.103 of the Government Code.<sup>3</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Section 552.117(a)(13) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters regardless of whether the current or former employee complies with sections 552.024 and 552.1175 of the Government Code. *See* Act of May 30, 2017, 85th Leg., R.S., H.B. 1278, § 1 (to be codified as an amendment to Gov't Code § 552.117(a)). Accordingly, the district attorney's office must withhold the information you highlighted under section 552.117(a)(13) of the Government Code.

Section 552.139 of the Government Code 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.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(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[.]

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the this information.

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 governmental entity;
- (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.

Act of May 27, 2017, 85th Leg., R.S., S.B. 564, § 2 (to be codified as an amendment to Gov't Code § 2059.055(b)). You assert some of the responsive information is confidential under section 552.139. Upon review, we find the district attorney's office must withhold the user names, computer names, and network group names you marked and highlighted under section 552.139(a) of the Government Code. However, you have not demonstrated any of the remaining responsive information relates to the specifics of the computer network security of the district attorney's office, or to the design, operation, or defense of the computer network of the district attorney's office as contemplated in section 552.139(a). Further, you have not demonstrated any of the remaining responsive information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the district attorney's office may not withhold any of the remaining responsive information under section 552.139 of the Government Code.

In summary, the district attorney's office may withhold the responsive information you marked under section 552.103 of the Government Code. The district attorney's office must withhold the information you highlighted under section 552.117(a)(13) of the Government Code. The district attorney's office must withhold the user names, computer names, and network group names you marked and highlighted under section 552.139 of the Government Code. The district attorney's office 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](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,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 674390

Enc. Submitted documents

c: Requestor  
(w/o enclosures)