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ATTORNEY GENERAL OF TEXAS

October 19, 2017

Ms. Erik K. Miller
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2017-24038

Dear Mr. Miller:

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# 681585 (TDCJ#AL0015).

The Texas Department of Criminal Justice (the "department") received a request for specified audits conducted during a specified time period, two specified manuals, and a specified plan.¹ You state you will release some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.139 of the Government Code provides, in part:

¹You state the department 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).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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:

(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; Act of May 30, 2017, 85th Leg., R.S., H.B. 8, § 13 (to be codified as amendments to Gov't Code § 2059.055(b)). The department seeks to withhold some of the submitted information under section 552.139. You state the information at issue "provides the key for understanding the Texas Anti-Gang Information Tracking ("TAGIT") System database" by "describ[ing] the primary data information, the source code, and the specified fields comprising the TAGIT System." Further, you assert the release of the manual pages at issue "could be used as a tool to manipulate access and entry into the database and thereby compromise the security of the TAGIT System." Based on your arguments and our review of the information, we find the information the department marked relates to computer network security, and the design, operation, or defense of the

department's computer network. Thus, we find the department must withhold the information it marked under section 552.139 of the Government Code.³

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (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.*, Open Records Decision Nos. 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 state the information you marked, if released, would interfere with law enforcement or prosecution of crime because it pertains to offender classification and critical security operations. You state release of offender classification information would allow "an offender to manipulate the classification process so that he has greater control over where and with whom he is housed," including to be near "fellow gang members[,] in an area where escape appears more feasible, [or] in an area where he can attack or kill a fellow offender." Additionally, you state release of the critical security operations information would allow offenders to "predict officers' movement, locations, and responses [and] give prisoners every piece of information they need to manipulate [department] security operations." Based on your representations and our review, we agree the release of the information you marked would interfere with law enforcement. Accordingly, the department may withhold the information it marked under section 552.108(b)(1) of the Government Code.

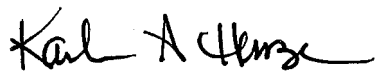
³As our ruling is dispositive, we need not address the department's remaining argument against disclosure of the information at issue.

In summary, the department must withhold the information it marked under section 552.139 of the Government Code. The department may withhold the information it marked under section 552.108(b)(1) of the Government Code. The department 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/gw

Ref: ID# 681585

Enc. Submitted documents

c: Requestor
(w/o enclosures)