



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2018

Ms. Ellen Webking
Open Records Attorney
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2018-03543

Dear Ms. Webking:

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# 695348 (TDI# 189657, 190190).

The Texas Department of Insurance (the "department") received two requests for information pertaining to a specified request for proposal. The department claims the submitted information is excepted from disclosure under sections 552.104, 552.107, 552.111, and 552.139 of the Government Code. The department also states, and provides documentation showing, that it notified Insure-Rite Incorporated ("Insure-Rite"); PASCO d/b/a Validati ("PASCO"); RESPEC, Inc. ("RESPEC"); and the University of Alabama Center for Advanced Public Safety (the "university") of the request for information and of their 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 received comments from PASCO. We also received comments submitted by one of the requestors. *See Id.* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the first requestor's claim the department failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure for the first request. *See*

id. § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Additionally, pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the department received the request for information on November 15, 2017. You inform us the department operated on a skeleton crew on November 22, 2017, and was closed on November 23, 2017 and November 24, 2017. This office does not count holidays, including skeleton crew days observed by a governmental body, as business days for the purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten- and fifteen-business-day deadlines were December 4, 2017, and December 11, 2017, respectively. The information required by section 552.301(b) and 552.301(e) was deposited into inter-agency mail on December 4, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department complied with the requirements of section 552.301 in requesting this decision from our office, respectively with respect to the first request.

Next, we note a portion of the submitted information, which we marked, consists of information that is subject to section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

(b) A state agency monthly may post contracts described by Subsection (a) that are valued less than \$15,000.

Gov't Code § 2261.253(a)(1), (b). The contract at issue is valued at more than \$15,000, is between the department, which is a state agency, other state agencies, and a private vendor

for the purchase of services, and the contract is not expired or completed. Although the department seeks to withhold the information at issue under section 552.104 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department may not withhold the information at issue under section 552.104 of the Government Code.

However, the department raises section 552.139 of the Government Code for some of the information subject to section 2261.253 of the Government Code. Section 552.139(d) of the Government Code states “[a] state agency shall redact from a contract posted on the agency’s Internet website under Section 2261.253 [of the Government Code] information that is made confidential by, or excepted from required public disclosure under, this section. The redaction of information under this subsection does not exempt the information from requirements of Section 552.021 or 552.221 [of the Government Code].” Gov’t Code § 552.139(d). Accordingly, we will address the department’s claim under section 552.139 of the Government Code for the information subject to 2261.253, as well as its arguments against release of the remaining submitted information.

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 Id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Insure-Rite, RESPEC, or the university. Thus, we have no basis to conclude these third parties have a protected proprietary interest in 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. Accordingly, the department may not withhold any of the submitted information on the basis of any proprietary interest Insure-Rite, RESPEC, or the university may have in the information.

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, 841 (Tex. 2015). The department states that submitted information pertains to a competitive bidding situation. The department states that although a contract has been awarded, procurement rules allow a losing bidder to file an appeal and that the requestor has timely filed an appeal. As a result, the department states, bidding could potentially reopen and it anticipates reopening this competitive bidding situation. Further, the department states the release of the submitted information would harm the purchasing interests of the department because the submitted information will provide “an advantage to a future bidder[.]” After review of the information at issue and consideration of the arguments, we find the department established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude

the department may withhold the information not subject to section 2261.253 of the Government Code under section 552.104(a).¹

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 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.

Id. § 2059.055(b). You state the information you marked “relates to sensitive information concerning the design, operation, and defense of [the department]’s computer network,

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

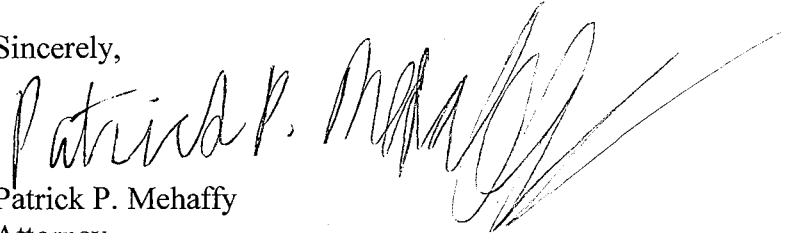
including a network diagram.” You argue release of the information at issue would “provide a roadmap for hackers to harm the computer system and in turn pose a security threat to [the department].” Based on these representations and our review of the information, we conclude the department must withhold the portion of the remaining information that you marked under section 552.139 of the Government Code.

In summary, the department may withhold the information not subject to section 2261.253 of the Government Code under section 552.104 of the Government Code. The department must withhold the information you marked under section 552.139 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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/som

Ref: ID# 695348

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

4 Third Parties
(w/o enclosures)