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ATTORNEY GENERAL OF TEXAS

February 22, 2019

Mr. Dushyanth Reddivari
Assistant Legal Counsel
Texas Legislative Budget Board
P.O. Box 12666
Austin, Texas 78711-2666

OR2019-05117

Dear Mr. Reddivari:

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# 752212 (TEA ID# 36167 & DPS PIR #18-8758).

The Legislative Budget Board (the "budget board") received a request for the biennial operating plans ("BOPs") for fiscal years 2020 through 2021 for the Texas Health and Human Services Commission, the Texas Education Agency (the "TEA"), the Texas Higher Education Coordinating Board, the Teacher Retirement System, the Texas Department of Public Safety ("DPS"), the Texas Department of Criminal Justice, and the Texas Workforce Commission. Although the budget board takes no position as to whether the submitted information is excepted under the Act, the budget board states release of the submitted information may implicate the interests of these specified governmental entities.¹ Accordingly, the budget board provides documentation showing it notified these governmental entities 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 § 552.304 (interested party may submit comments stating why information should or should not be released). We received comments from the TEA. We also received comments from

¹We note the budget board did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of third party interests to the submitted information. *See id.* §§ 552.007, .302, .352.

DPS, which states it does not object to the release of its information. We have reviewed the submitted arguments and the submitted information.

Initially, we note the budget board has only submitted BOPs for the TEA and DPS. To the extent information responsive to the remainder of the request existed on the date the budget board received the request, we assume it has released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the budget board has not yet released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note an interested party may submit comments under section 552.304 to explain its reasons as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.304. As of the date of this letter, we have not received comments from any of the remaining governmental entities at issue explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining governmental entities have protected interests in the submitted information. Accordingly, the budget board may not withhold the submitted information on the basis of any interest the remaining governmental entities may have in the information.

We next address the TEA's argument under section 552.139 for portions of its information at issue. 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 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;
- (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). The TEA asserts the information it indicated is confidential pursuant to section 552.139. It states the information at issue relates to an “assessment of data processing operations, a computer program, network, and electronically stored information of the TEA.” The TEA further asserts release of this information could result in “unauthorized access, alteration, damage, erasure, and/or inappropriate use.” Based on these representations and our review, we find the information at issue, which we marked relates to computer network security, and the design, operation, or defense of the TEA’s computer network. Accordingly, the budget board must withhold the information we marked under section 552.139 of the Government Code. As no further exceptions to disclosure were raised, the budget board 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
Assistant Attorney General
Open Records Division

PPM/mo

Ref: ID# 752212

Enc. Submitted documents

c: Requestor
(w/o enclosures)