



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2019-10076

Dear Ms. Burnett:

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# 759247 (OGC# 187804).

The University of Texas Southwest Medical Center at Dallas (the "university") received a request for the resume of a named individual and a specified contract between the university and Atos IT Solutions and Services, Inc. ("Atos"). You state you have released the requested resume. You claim some of the submitted information is excepted from disclosure under section 552.139 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Atos. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of its right to submit arguments to this office as to why the information at issue 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 have considered the claimed exception and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, we have not received comments from the third party explaining why the submitted information should not be

released. Therefore, we have no basis to conclude the third party has protected proprietary interests in the submitted information. *See id.* § 552.110; 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 university may not withhold the submitted information on the basis of any proprietary interest the third party may have in the information.

The university raises section 552.139 of the Government Code for the portions of the submitted information it has marked.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:

¹We note, although the submitted contract is subject to section 2261.253 of the Government Code, section 552.139(d) of the Government Code provides "[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." *See* Gov't Code § 552.139(d). In addition, redaction of information under section 552.139(d) does not exempt the information from the requirements of section 552.021 or 552.221 of the Act. *Id.*

- (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). The university states the information it has marked consists of “specific details regarding the [u]niversity’s computer network and a third party contractor’s software, processes for accessing the computer network, and certain vulnerabilities related to the computer network and software.” The university states release of this information, “which pertains to network security, would make such information vulnerable to unauthorized access or harm.” Based on these representations and our review of the information, we conclude the university must withhold the information it has marked under section 552.139 of the Government Code.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the university must withhold the information it has marked under section 552.139 of the Government Code. The university must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read "Michelle Garza", written in a cursive style.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/jxd

Ref: ID# 759247

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)