



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2020

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-27686

Dear Mr. Miles:

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# 852476 (HHSC Reference No. 23192).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to request for proposals no. HHS0002644. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified the University of Florida d/b/a Texas External Quality Review Organization ("TEQRO") of the request for information and of its 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 have received comments from TEQRO. We have considered the submitted arguments and reviewed the submitted information.

Section 552.1101 of the Government Code provides, in relevant part:

- (a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the

information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). We understand TEQRO to raise section 552.1101 based upon its arguments. TEQRO asserts disclosure of some of its information would reveal an individual approach to work, staffing and processes and give advantage to a competitor. Upon review, we find some of the submitted information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find TEQRO has failed to provide specific factual evidence demonstrating any portion of the rest of the submitted information at issue is subject to section 552.1101(a). Therefore, the commission may not withhold any of the submitted information at issue under section 552.1101(a).

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;

(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;

...

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

Gov't Code § 552.139(a), (b)(1)-(2), (b)(4). 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). TEQRO asserts some of the submitted information reveals information that relates to the design, operation, or defense of TEQRO's computer network.¹ We understand TEQRO was a commission contractor at the time the information at issue was created and release of this information could allow unauthorized access to the computer network and potential access to confidential and sensitive records. Based on these representations and our review of the information at issue, we conclude the commission must withhold the information we indicated under section 552.139 of the Government Code. However, we find TEQRO has failed to demonstrate any of the remaining information relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). *See id.* § 2059.055 (defining confidential network information for purposes of section 2059.055). Further, we find TEQRO has failed to demonstrate this information consists of a computer network vulnerability report or assessment as

¹ Although TEQRO does not cite to section 552.139 of the Government Code, we understand TEQRO to raise this exception based on its arguments.

contemplated by section 552.139(b). Therefore, the commission may not withhold the remaining information under section 552.139 of the Government Code.

In summary, the commission must withhold the information we indicated under section 552.139 of the Government Code. The commission 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 852476

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)