



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 13, 2022

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

OR2022-16874

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# 952913 (HHSC Reference ORR No. A03242022.0450008).

The Texas Health and Human Services Commission (the "commission") received a request for certain information pertaining to a specified statement of work. We understand you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.139 of the Government Code. In addition, you state release of the submitted information may implicate the proprietary interests of Deloitte Consulting, L.L.P. ("Deloitte"). Accordingly, you state, and provide documentation showing, you notified Deloitte of the request for information and of the 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 Deloitte. We have considered the submitted arguments and reviewed the submitted information.

Section 552.139 of the Government Code provides, in part, as follows:

- (a) Information is excepted from [required public disclosure] if it is information that relate 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, as follows:

(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). You assert the information you indicated reveals “critical network information such as host, storage area network, mapping, infrastructure and architecture, processes and procedures, database server names[.] and network diagrams for [the commission's] technology infrastructure.” You state release of this information “would assist individuals seeking unauthorized access to the [commission's] network [to] refine their attacks, avoid possible discovery, and aim their attacks at high value sources of confidential information.” Based upon these representations and our review of the information at issue, we conclude the commission must withhold the information you indicated under section 552.139 of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Deloitte argues some of its information at issue consists of commercial or financial information subject to section 552.110(c). Upon

review, we find Deloitte has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we marked under section 552.110(c) of the Government Code.<sup>1</sup>

We note some of the remaining information may be protected by copyright. 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 copyright law and the risk of a copyright infringement suit.

In summary, the commission must withhold the information you indicated under section 552.139 of the Government Code. The commission must withhold the information we marked under section 552.110(c) of the Government Code. The commission must release the remaining information; however, any information subject to copyright may be released only 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 <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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jxd

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)