



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2022

Ms. ML Calcote
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2022-24373

Dear Ms. Calcote:

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# 965036 (Ref. No. 22-1301).

The Texas Department of Public Safety (the "department") received a request for specified communications pertaining to a specified fund. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim the submitted information is excepted from disclosure under the Texas Homeland Security Act (the "HSA"). Section 552.101 of the Government Code encompasses information subject to section 418.177 of the Government Code, which was added to chapter 418 of the Government Code as part of the HSA. Section 418.177 provides that information is confidential if it:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of

persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 (1996). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue reveals "detailed network security information, including assessments of the extent to which various IT programs and systems are vulnerable to alteration, damage, erasure, and/or inappropriate use." Upon review, we find you have demonstrated some of the submitted information was collected, assembled, or maintained by a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relate to an assessment of the risk or vulnerability of persons and property to an act of terrorism or related criminal activity. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.¹ However, we find you have failed to demonstrate any of the remaining information is subject to section 418.177 of the Government Code. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.139 of the Government Code provides, in relevant part, the following:

(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 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

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

to alteration, damage, erasure, or inappropriate use;

(3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body; and

(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.

Id. § 552.139(a)-(b). The department asserts the remaining information is made confidential under section 552.139. However, upon review, we find you have failed to demonstrate the applicability of section 552.139 to any of the remaining information. Therefore, the department may not withhold any portion of the remaining information under section 552.139(a) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 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 <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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jm

Ref: ID# 965036

Enc. Submitted documents

c: Requestor
(w/o enclosures)