



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 4, 2022

Ms. Charla Thomas  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2022-30610

Dear Ms. Thomas:

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# 976149 (ORR 22-2027).

The City of Temple (the "city") received a request for fourteen categories of information associated with a named company, including contracts and communications. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information, a portion of which we understand is a representative sample.<sup>2</sup>

Initially, we note the city has only submitted certain communications. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have 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 you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302.

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

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<sup>1</sup> Although you do not raise section 552.139 of the Government Code in your brief, we understand the city to assert this exception based on your markings and arguments.

<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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; [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)(1)-(2), (4). Section 2059.055 of the Government Code provides, in pertinent 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 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). You assert the submitted information includes information "contained in or derived from an information security log." You state the information at issue "aris[es] from the [c]ity's routine effort to prevent, detect, investigate, or mitigate a computer security incident." Based upon your representations and our review, we find section 552.139 is applicable to some of the submitted information. Accordingly, the city must withhold the information we have marked under section 552.139 of the Government Code.

However, we find you have failed to demonstrate the remaining information at issue relates to computer network security, or to the design, operation, or defense of a computer network as contemplated by 552.139(a), consists of a network vulnerability report or assessment as contemplated by section 552.139(b), or relates to restricted information under 2059.055. Further, we find you have failed to demonstrate the information at issue relates to routine efforts to prevent, detect, investigate, or mitigate a computer security incident. Accordingly, section 552.139 is not applicable to the remaining information, and the city may not withhold it on that basis.

We understand the city generally claims the remaining information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked under section 552.139 of the Government Code. The city 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/eb

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)