



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 20, 2022

Ms. Audra Gonzalez Welter  
Assistant General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-32336

Dear Ms. Welter:

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# 979189 (Ref. No. 206786).

The University of Texas at El Paso (the "university") received a request for information pertaining to the RFP No. 724-2204-SF for Planning and Scheduling Software.<sup>1</sup> We understand you will redact information under section 552.136(c) of the Government Code, and you will redact dates of birth pursuant to Open Records Letter No. 2017-10416 (2017).<sup>2</sup> You claim some of the submitted information is excepted from disclosure under section 552.139 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: Anaplan, Inc.; CELCAT; CollegeNET, Inc; and Vision Infosystems. Accordingly, you state, and provide documentation demonstrating, you notified the third parties of the request for information

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<sup>1</sup> We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Letter No. 2017-10416 authorizes the university to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

and of their 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 considered the exception you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of previous request for information, in response to which this office issued Open Records Letter No. 2022-25959 (2022). In that ruling we determined the university: (1) must withhold the information it marked under section 552.139 of the Government Code; (2) must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. Accordingly, the university must continue to rely on Open Records Letter No. 2022-25959 as previous determination and withhold or release the identical information in accordance with that ruling.<sup>3</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not subject to the previous determination, we will consider the submitted arguments against disclosure.

Next, 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 interested third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude interested third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the university may not withhold any portion of the submitted information on the basis of any proprietary interest interested third parties may have in it.

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]

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<sup>3</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.

(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[.]

*Id.* § 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:

(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 marked is confidential pursuant to section 552.139. You state the information at issue is related to security characteristics in place to ensure the protection of university information. You also state release of the information at issue would provide a roadmap of the university's network and would make it vulnerable to unauthorized access or harm. Based on your representations and our review, we find the information you marked relates to computer network security, and the design, operation, or defense of the computer network. Accordingly, the university must withhold the information you marked under section 552.139 of the Government Code.

We note some of the remaining information appears to 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 the copyright law and the risk of a copyright infringement suit.

In summary, the university must continue to rely on Open Records Letter No. 2022-25959 as previous determinations and withhold or release the identical information in accordance with that ruling. The university must withhold the information you marked under section

552.139 of the Government Code. The university must release the remaining information; however, any information subject to 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 <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,

Cesar Mata  
Attorney  
Open Records Division

CM/mo

Ref: ID# 979189

Enc. Submitted documents

c: Requestor  
(w/o enclosures)