



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2022

Mr. Christopher H. Schulz
Counsel for the Seguin Independent School District
Schulman, Lopez, Hoffer & Adelstein, L.L.P.
7200 North Mopac Expressway, Suite 160
Austin, Texas 78731

OR2022-38417

Dear Mr. Schulz:

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# 989515.

The Seguin Independent School District (the "district"), which you represent, received a request for information pertaining to online monitoring software. You claim 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 ContentKeeper Technologies ("CKT"). Accordingly, you state you notified CKT 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 considered the exception you claim and reviewed the submitted information.

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

Section 552.139 of the Government Code provides, in relevant 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; [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 pertains to specific search terms and monitoring software. We note section 2059.055 only applies to network security

information. Chapter 2059 is entitled “Texas Computer Network Security System,” and section 2059.001(3) of the Government Code defines “network security” as “the protection of computer systems and technology assets from unauthorized external intervention or improper use.” *See id.* § 2059.001(3). Based upon these representations and our review, we find the information we marked relates to computer network security, or to the design, operation, or defense of a computer network. Accordingly, the district must withhold the information we marked under section 552.139. However, we find you have failed to demonstrate the remaining information 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 remaining information 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 district may not withhold it on that basis. As no further exceptions have been raised, the district 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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

JWH/pt

Ref: ID# 989515

Enc. Submitted documents

c: Requestor
(w/o enclosures)