



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2022

Mr. Ronny H. Wall
Senior Associate General Counsel
Texas Tech University System
MSC 11006
P.O. Box 42021
Lubbock, Texas 79409

OR2022-39475

Dear Mr. Wall:

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# 986313 (TTU ID# 2022-OR-721).

Texas Tech University (the "university") received a request for certain e-mails and attachments sent or received by the university's president that include two specified terms during a defined time period. The university claims some of the submitted information is not subject to the Act. Additionally, the university claims some of the submitted information is excepted from disclosure under section 552.139 of the Government Code. Further, the university states release of some of the submitted information may implicate the proprietary interests of The Big 12 Conference, Inc. (the "Big 12"). Accordingly, the university states, and provides documentation showing, it notified the Big 12 of the request for information and of its right to submit arguments to this office. *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 university's arguments and reviewed the submitted information.

The university argues Attachment C is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code reads as follows:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The university contends the information at issue is not subject to the Act because the information was sent and received by the university's president in his capacity as a member of the Big 12's board of directors, and not in his official capacity as an employee of the university. Thus, the university asserts the information at issue was not written, produced, collected, assembled, or maintained in connection with the transaction of any official business of the university. Having considered the submitted arguments and reviewed the information at issue, we find the information at issue was not "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. Gov't Code § 552.002; see Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). We therefore conclude Attachment C is not subject to the Act and the university is not required to release this information in response to the instant request for information.

Next, we note the university has redacted portions of the remaining information. The university does not assert, nor does our review of the records indicate, it has been authorized to withhold this information without seeking a ruling from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must

be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the university should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code § 552.302.*

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]

(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). The university asserts Attachment B is confidential pursuant to section 552.139. The university states the information at issue consists of "highly sensitive security information, that, if released, would cause harm to the [u]niversity and thousands

of students.” The university also states release of the information at issue “could allow unauthorized access to the university’s networking system and other support services[.]” Based on these representations and our review, we find the information at issue relates to computer network security, and the design, operation, or defense of the computer network. Accordingly, the university must withhold Attachment B under section 552.139 of the Government Code.

In summary, Attachment C is not subject to the Act and the university is not required to release this information in response to the instant request for information. The university must withhold Attachment B under section 552.139 of the Government Code.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/pt

Ref: ID# 986313

c: Requestor