



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2010

Ms. Laura Garza Jimenez
Nueces County Attorney
Nueces County Courthouse
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2010-01806

Dear Ms. Jimenez:

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# 369452.

The County of Nueces (the "county") received a request for a copy of the inmate telephone proposals of Value Added Communications, Inc. ("VAC"); Synergy Telecom Service Co, Inc. ("Synergy"); Global Tel*Link ("GTL"); Securus Technologies, Inc. ("Securus"); and Digital Solutions, Inc. ("DSI"). You claim the marked portions of the submitted proposals are excepted from disclosure under section 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties VAC, Synergy, GTL, Securus, and DSI. Accordingly, you state you notified VAC, Synergy, GTL, Securus, and DSI of the county's receipt of the request for information and of the companies' right to submit arguments to this office as to why their information should not be released to the requestor. *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.

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 VAC, Synergy, GTL, Securus, or DSI explaining why their proposals should not be released. Therefore, we have no basis to conclude VAC, Synergy, GTL, Securus, or DSI have a protected proprietary interest in their proposals. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the county may not withhold any of the proposals on the basis of any proprietary interest VAC, Synergy, GTL, Securus, or DSI may have in them.

We note, however, Synergy's proposal contains tax return information. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Consequently, the county must withhold the submitted 1120S forms we have marked in Synergy's proposal pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't

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 VAC, Synergy, GTL, Securus, or DSI explaining why their proposals should not be released. Therefore, we have no basis to conclude VAC, Synergy, GTL, Securus, or DSI have a protected proprietary interest in their proposals. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the county may not withhold any of the proposals on the basis of any proprietary interest VAC, Synergy, GTL, Securus, or DSI may have in them.

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Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. We agree the insurance policy numbers you have marked in DSI's and GTL's proposals, and the bank account and routing numbers you have marked in GTL's proposal are excepted from disclosure under section 552.136. However, the marked check number in GTL's proposal does not constitute an access device number and may not be withheld based on section 552.136. Accordingly, with the exception of the check number, the county must withhold the information you have marked under section 552.136.¹

In summary, the county must withhold the 1120S forms we have marked in Synergy's proposal under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The county must withhold the insurance policy numbers you have marked in DSI's and GTL's proposals, and the bank account and routing numbers you have marked in GTL's proposal under section 552.136 of the Government Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank account number and bank routing number under section 552.136, without the necessity of requesting an attorney general decision.

Ref: ID# 369452

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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