



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2014

Mr. W. Lee Auvenshine
Assistant County and District Attorney
Ellis County and District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2014-00682

Dear Mr. Auvenshine:

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# 510951.

The Ellis County Purchasing Department (the "department") received a request for the following information: (1) all competitors' bids for RFP No. 2013-009; (2) scoring documents used to determine the award; (3) all communications that assisted in determining the award; and (4) a copy of the contract with the winning bidder. You state the department does not possess information responsive to the third category of the request.¹ You also state the department will release the information responsive to the second and fourth categories of the request. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.² *See*

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²The third parties are Securus Technologies and Infinity Networks.

Gov't Code § 552.305 (permitting interested party to submit to attorney general reasons why requested information should not be released); *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 reviewed the submitted information.

Initially, we note portions of the submitted information, which you have marked, are not responsive because they were created after the department received the instant request for information or because they are outside of the scope of the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release such information in response to this request.

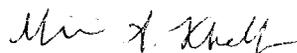
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either of the interested third parties explaining why their information should not be released. Thus, we have no basis to conclude either of the third parties have a proprietary interest in the information at issue. *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 the requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, the department may not withhold any of the responsive information on the basis of any proprietary interest the third parties may have in it.

We note, and you acknowledge, some of the submitted information may be protected by copyright. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, 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. As no exceptions to disclosure have been raised, the information at issue must be released, but any information protected by 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 510951

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Chuck Bahr
Account Manager
Securus Technologies
14561 Dallas Parkway, Suite 600
Dallas, Texas 75254
(w/o enclosures)

Mo Mascorro
President
Infinity Networks
P.O. Box 30137
Austin, Texas 78755
(w/o enclosures)