



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2015

Ms. Caroline L. Cross
Assistant District Attorney
Civil Division
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2015-18390

Dear Ms. Cross:

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# 577758.

The Dallas County Sheriff's Office (the "sheriff's office") received a request for four categories of information related to the winning bidder in a specified request for proposals. You state you have released some information to the requestor. You claim a portion of the submitted information is excepted from disclosure under sections 552.108 and 552.139 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Securus Technologies, Inc. ("Securus"). Accordingly, you state, and provide documentation demonstrating, you notified Securus 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; *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 Act in certain circumstances). We have considered the exceptions 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 Securus explaining why the submitted information should not be released. Therefore, we have no basis to conclude Securus has a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the sheriff's office may not withhold the submitted information on the basis of any proprietary interest Securus may have in the information.

Section 552.108 of the Government Code provides, in relevant part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(b)(1)–(2).¹ A governmental body claiming section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b)(1) excepts from public

¹Although you cite to sections 552.108(a)(1) and 552.108(a)(2) of the Government Code in your briefing to this office, we understand you to raise sections 552.108(b)(1) and 552.108(b)(2) of the Government Code based on the substance of your arguments.

disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state disclosure of the information at issue “would compromise multiple law enforcement agencies’ ability to effectively utilize the technology because it would expose investigative techniques and reveal information that a person could use to compromise the system and the facility’s physical and data security.” Upon review, we find you have demonstrated the information we have marked would interfere with law enforcement or crime prevention. However, we note this information is contained in a submitted proposal, and we are unable to determine whether this information pertains to features that have been or will be implemented at a sheriff’s office jail facility. Accordingly, to the extent the information we have marked pertains to features that have been or will be implemented at a sheriff’s office jail facility, the sheriff’s office may withhold the information we have marked under section 552.108(b)(1) of the Government Code.² However, to the extent the information we have marked pertains to features that have not been and will not be implemented at a sheriff’s office jail facility, this information does not interfere with law enforcement or crime prevention, and it may not be withheld under section 552.108(b)(1) of the Government Code. Furthermore, we find you have failed to demonstrate how the release of any portion of the remaining information you have indicated would interfere with law enforcement or crime prevention. Accordingly, the sheriff’s office may not withhold the remaining information at issue under section 552.108(b)(1) of the Government Code.

A governmental body claiming section 552.108(b)(2) must demonstrate the information at issue relates to a concluded criminal investigation that did not result in a conviction or deferred adjudication. *See* Gov’t Code § 552.301(e)(1)(A). Upon review, we find you have not demonstrated the remaining information at issue pertains to a criminal investigation or prosecution that has concluded in a result other than conviction or deferred adjudication. Thus, the sheriff’s office has not met its burden under section 552.108(b)(2). Accordingly, we find you have failed to demonstrate the applicability of section 552.108(b)(2) to the

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

remaining information you have indicated, and the sheriff's office may not withhold the remaining information at issue on this basis.

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[.]

Gov't Code § 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 submitted information “contains detailed information regarding network security and the design, operation, and defense of the inmate phone and video visitation system that is currently installed and operating in the Dallas County jail.”

However, upon review we find you have not demonstrated how any of the remaining information relates to computer network security, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Further, we find you have failed to explain how any of its information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.139 of the Government Code.

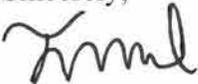
We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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, to the extent the information we have marked pertains to features that have been or will be implemented at a sheriff's office jail facility, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The sheriff's office must release the remaining information; however, any information that is subject to copyright may be released only 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 577758

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)