



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2015

Ms. Ginger K. Treadwell  
Assistant County Attorney  
Tom Green County  
122 West Harris  
San Angelo, Texas 76903

OR2015-18763

Dear Ms. Treadwell:

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# 578639.

Tom Green County (the "county") received a request for proposals submitted for two specified RFPs and information related to the specified RFPs. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Global Tel\*Link, Corp. ("GTL"); Legacy Inmate Communications; Securus Technologies, Inc.; and Synergy Telecom Service Company, Inc. Accordingly, you state, and provide documentation showing, you notified these 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. *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 received comments from GTL. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the county has submitted only the requested proposals. To the extent information responsive to the remainder of the request existed on the date the county received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it

must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from GTL. Thus, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder."<sup>1</sup> Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at \*9. GTL states it has competitors. In addition, GTL states release of its information at issue would give its competitors an unfair advantage in similar competitive bidding processes or business in general. After review of the information at issue and consideration of the arguments, we find GTL has established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>2</sup>

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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."<sup>3</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has

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<sup>1</sup>Although GTL also raises section 552.101 of the Government Code in conjunction with sections 552.104 and 552.110 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-2 (2002).

<sup>2</sup>As our ruling is dispositive, we need not address GTL's remaining arguments against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We note some of the remaining information appears to 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, the county may withhold the information we have marked under section 552.104(a) of the Government Code. The county must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The county must release the remaining information; however, any information subject to 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](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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 578639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Securus Technologies, Inc.  
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12126 El Sendero  
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