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ATTORNEY GENERAL OF TEXAS

December 7, 2015

Mr. Tillman S. Roots
Assistant District Attorney - Civil
Criminal District Attorney's Office
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2015-25510

Dear Mr. Roots:

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# 589957 (Comal County File No. 15OR-091).

The Comal County Sheriff's Office (the "sheriff's office") received a request for seven categories of information pertaining to inmate telephone services. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You further state release of this information may implicate the proprietary interests of Securus Technologies, ("Securus"). Accordingly, you state 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(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 exceptions you claim and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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." *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015). Although the sheriff's office raises section 552.104 for the submitted contract, we find the sheriff's office has failed to demonstrate the release of the information at issue would give advantage to a competitor or bidder. Thus, the sheriff's office may not withhold the submitted information under section 552.104(a).

Although the sheriff's office argues portions of the submitted information are excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Thus, we do not address the sheriff's office's argument under section 552.110. Further, we note 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Securus explaining why the information at issue should not be released. Therefore, we have no basis to conclude Securus has a protected 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 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 sheriff's office may not withhold the information at issue on the basis of any proprietary interest Securus may have in the information. As no other exceptions to disclosure have been raised, the sheriff's office must release the submitted information.

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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 589957

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Securus Technologies
c/o Mr. Tillman S. Roots
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