



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2016

Ms. Stephanie Walker
Legal Assistant
Civil Division
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2016-10652

Dear Ms. Walker:

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# 611067 (DA File No. 16OR-030).

The Comal County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a contract with Securus Technologies, Inc. ("Securus"). The district attorney's office claims the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ The district attorney's office also states it notified Securus of the receipt by the district attorney's office of the request for information and of Securus's right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 claimed exceptions and reviewed the submitted information.

¹Although the district attorney's office also raises sections 552.101 through 552.103, 552.105 through 552.109, and 552.111 through 552.148 of the Government Code, it has not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume the district attorney's office no longer asserts these exceptions. *See Gov't Code* §§ 552.301, .302.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Securus has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of that third party, and the district attorney's office may not withhold any portion of it on that basis. *See* 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.

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*, 466 S.W.3d 831, 841 (Tex. 2015). The district attorney's office states release of the submitted information "may give advantage to a competitor of the vendor that was awarded the inmate phone services contract." However, the district attorney's office does not assert the requested information pertains to a competitive bidding situation, or that it has specific marketplace interests in the information at issue. Thus, we find the district attorney's office has not established release of the submitted information would give an advantage to a competitor. Therefore, the district attorney's office may not withhold the submitted information under section 552.104.

The district attorney's office also asserts the information at issue is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Accordingly, we do not address the argument of the district attorney's office under section 552.110.

Finally, the district attorney's office asserts the materials at issue 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. Therefore, the district attorney's office must release the submitted

information, but may only release any copyrighted information 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 611067

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)