



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2015

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

Mr. Richard A. Gore  
Assistant Criminal District Attorney  
Randall County  
2309 Russell Long Boulevard, Suite 120  
Canyon, Texas 79015

OR2015-26928

Dear Mr. Gore:

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# 591983.

The Randall County Purchasing Department (the "county") received a request for (1) the responses from each bidder other than the requestor for a specified request for proposals; (2) scoring documents used to determine the award; (3) any communications between the county and the bidders; (4) a list of all evaluations and the recommended vendor by evaluator; and (5) the contract with the winning bidder. Although the county takes 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 several third parties. Accordingly, you state, and provide documentation showing, you notified Correct Solutions, L.L.C.; Encartele, Inc. ("Encartele"); Global Tel-Link ("GTL"); IC Solutions; and Legacy Inmate Communications of the request for information and of the companies' rights 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 Encartele and GTL. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

Initially, we note you have only submitted bidder responses responsive to the first part of the request. 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 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, 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; 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 county may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Encartele and GTL claim portions of their submitted information are excepted under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 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 841. Encartele and GTL state they have competitors. In addition, Encartele states disclosure of its financial information will skew the future competitive bid process unfairly to Encartele's competitors. GTL states release of its submitted information would allow a competitor to determine how GTL would be able to bid and thus, give a competitor an advantage in a competitive bidding situation. After review of the information at issue and consideration of the arguments, we find Encartele and GTL have established release of the information at issue would give an advantage to a competitor or bidder. Thus,

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<sup>1</sup>We note the county did not comply with the requirements of section 552.301 of the Government Code in regards to some of the submitted information. *See* Gov't Code § 552.301(b). Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302.

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 of the Government Code states “[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 determined an insurance policy number is an access device for purposes of this exception. Thus, the county must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. 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 remaining information under section 552.136 of the Government Code. The county must release the remaining information; however, 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](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

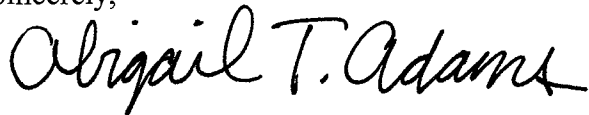
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<sup>2</sup>As our ruling is dispositive, we need not address Encartele’s and GTL’s remaining arguments against disclosure of the information at issue.

<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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 591983

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Patrick H. Temple  
Correct Solutions Group  
182 Bastille Lane  
Ruston, Louisiana 71270  
(w/o enclosures)

Mr. Joe Garbe  
ICSolutions  
2200 Danbury Street  
San Antonio, Texas 78217  
(w/o enclosures)

Mr. Donald Peeler  
Encartele, Inc.  
P.O. Box 460610  
Papillion, Nebraska 68046  
(w/o enclosures)

Ms. Claudia Regen  
Global Tel-Link  
12021 Sunset Hills Road, Suite 100  
Reston, Virginia 20190  
(w/o enclosures)

Mr. Darryl Hughes  
Legacy Inmate Communications  
10833 Valley View Street, Suite 150  
Cypress, California 90630  
(w/o enclosures)

JUN 05 2017

At 8:54 A.M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-000837

INMATE CALLING SOLUTIONS, LLC,  
*Plaintiff,*

v.

KEN PAXTON, ATTORNEY GENERAL  
OF TEXAS and RANDALL COUNTY,  
TEXAS,  
*Defendants.*

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IN THE DISTRICT COURT OF

419th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Plaintiff Inmate Calling Solutions, LLC (Plaintiff or ICSolutions) sought declaratory relief from Attorney General Open Records Letter Ruling OR2015-26928 (the Letter Ruling), issued to Defendant Randall County, Texas (the County) by Defendant Ken Paxton, Attorney General of Texas (the Attorney General). ICSolutions sought the withholding of certain information requested from the County under the PIA. ICSolutions, the Attorney General, and the County (collectively, the Parties) have settled all matters in controversy arising out of this lawsuit and agree to the entry of this Agreed Final Judgment. *See* Ex. A (Settlement Agreement).

Pursuant to Tex. Gov't Code § 552.325(d) the Court shall allow the requestors a reasonable period of time to intervene after the Attorney General attempts to notify the requestor of the proposed settlement. The Attorney General represents to the Court and the Court hereby takes judicial notice that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified mail to the each requestor's last known address on \_\_\_\_\_ May 2, 2017, providing reasonable notice of this setting and of each requestor's right to intervene in the suit. *See* Ex. B (proof of



mailing). The requestors were informed of the proposed Settlement Agreement under which the County must withhold portions of the requested information as agreed upon by the Parties. The requestors were also informed of their right to intervene in the suit to contest the withholding of the information. Neither requestor has informed the Parties of an intention to intervene in the lawsuit, nor has a plea in intervention been filed.

After considering the agreement of the Parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between the Parties in this suit.

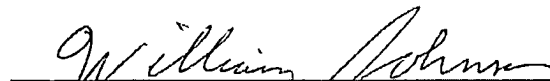
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The Parties agree that, in accordance with the PIA and under the facts presented, the financial statements of ICSolutions and its parent company Centric Group LLC, if released, would give an advantage to a competitor or bidder, and are excepted from public disclosure pursuant to Tex. Gov't Code § 552.104 (the "Excepted Information");
2. The County must withhold the Excepted Information and must release any remaining requested information to the requestors, to the extent it has not already done so, subject to applicable copyright law;
3. All court costs and attorney fees are taxed against the Party incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment fully and finally disposes of all claims between all Parties in this cause, and is a final judgment.


SIGNED this 5 day of June, 2017.

  
\_\_\_\_\_  
JUDGE PRESIDING


AGREED:

  
\_\_\_\_\_  
WILLIAM P. JOHNSON  
State Bar No. 24002367  
DUGGINS WREN MANN & ROMERO, LLP  
600 Congress Avenue  
Suite 1900  
Austin, Texas 78701  
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bjohnson@dwmrlaw.com

COUNSEL FOR PLAINTIFF INMATE CALLING  
SOLUTIONS, LLC

  
\_\_\_\_\_  
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COUNSEL FOR DEFENDANT KEN PAXTON,  
ATTORNEY GENERAL OF TEXAS

  
\_\_\_\_\_  
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richard.gore@randallcounty.com

COUNSEL FOR DEFENDANT RANDALL  
COUNTY, TEXAS

CAUSE NO. D-1-GN-16-000837

INMATE CALLING SOLUTIONS, LLC, <i>Plaintiff,</i>  v.  KEN PAXTON, ATTORNEY GENERAL OF TEXAS and RANDALL COUNTY, TEXAS, <i>Defendants.</i>	§ § § § § § § § § §	IN THE DISTRICT COURT OF       419th JUDICIAL DISTRICT      TRAVIS COUNTY, TEXAS
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**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is made by and between Plaintiff Inmate Calling Solutions, LLC (ICSolutions) and Defendants, Ken Paxton, Attorney General of Texas (the Attorney General), and Randall County, Texas (the County) (collectively, the Parties). This Agreement is made on the terms set forth below.

**BACKGROUND**

The County received two records requests under the Texas Public Information Act (the PIA) for, in part relevant to this lawsuit, the bid package submitted by ICSolutions to the County in response to a specified request for proposals, which included the 2013 and 2014 audited consolidated financial statements of ICSolutions' parent company Centric Group LLC (the "Requested Documents").

Pursuant to Tex. Gov't Code § 552.305, the County declined to release the Requested Documents and sought an open records ruling from the Attorney General. On December 22, 2015, the Attorney General issued Open Records Letter Ruling OR2015-26928. The ruling concluded that the Requested Documents were not excepted from required public disclosure and must be released to the requestors. ICSolutions disputed the ruling as to a portion of the Requested Documents and filed a lawsuit,

styled Cause No. D-1-GN-16-000837, *Inmate Calling Solutions, LLC v. Ken Paxton, et al.*, in the 419th Judicial District Court, Travis County, Texas (the Lawsuit), to preserve its rights under the PIA. ICSolutions provided notice of the Lawsuit to the requestors pursuant to Tex. Gov't Code § 552.325.

Tex. Gov't Code § 552.325(c) allows the Parties to enter into a settlement under which a portion of the Requested Documents may be withheld. The parties wish to resolve this matter without further litigation.

### **TERMS**

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. The Attorney General and ICSolutions agree that the financial statements of ICSolutions and its parent company Centric Group LLC, if released, would give an advantage to a competitor or bidder, and accordingly are excepted from required public disclosure pursuant to Tex. Gov't Code § 552.104 (hereinafter, the "Excepted Information");

2. The County must withhold the Excepted Information described in Paragraph 1 of this Agreement from public disclosure;

3. Apart from the Excepted Information, which must be withheld, the County must release the remaining portion of the Requested Information to the requestors, to the extent it has not already done so, subject to applicable copyright law;

4. The Attorney General, ICSolutions, and the County agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to the Requestors;

5. The Attorney General agrees to notify the Requestors, as required by Tex. Gov't Code §552.325(c), of the proposed settlement and of their right to intervene in the Lawsuit, should they contest the withholding of the Excepted Information, as described in Paragraph 1 of this Agreement;

6. Should a Requestor intervene in the Lawsuit, a final judgment entered in the Lawsuit will prevail over this Agreement, to the extent of any conflict;

7. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation;

8. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement;

9. ICSolutions warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement;

10. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement;

11. The County warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of Randall County and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement; and,

12. This Agreement shall become effective, and be deemed to have been executed, on the date upon which the last of the undersigned parties signs this Agreement.

INMATE CALLING SOLUTIONS, LLC

By: William Johnson  
WILLIAM P. JOHNSON  
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bjohnson@dwmrlaw.com

Date: April 24, 2017

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By: Matthew R. Entsminger  
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Date: April 25, 2017

RANDALL COUNTY, TEXAS

By: Richard R. Gore  
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Date: April 21, 2017