



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2017

Mr. Christopher Garza
Assistant District Attorney
County of Brazoria
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2017-01708

Dear Mr. Garza:

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# 643269.

The Brazoria County Purchasing Department (the "county") received two requests from different requestors for information pertaining to request for proposals number 15-40, related to inmate telephone services. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Securus Technologies, Inc. ("Securus"); ICSolutions; Global Tel*Link, Corp. ("GTL"); and Telmate, L.L.C. ("Telmate"). Accordingly, you state you notified Securus, ICSolutions, GTL, and Telmate 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 reviewed the submitted information and the submitted arguments.

Initially, you inform us some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-20678 (2016) and 2016-21157 (2016). Open Records Letter No. 2016-20678 held

the county may not withhold the information at issue in that ruling, but must release it in accordance with copyright law. Open Records Letter No. 2016-21157 held the county must release the information at issue in Open Records Letter No. 2016-20678 pursuant to section 552.007 of the Government Code, but may withhold the remaining information at issue in that ruling pursuant to section 552.104 of the Government Code. We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, to the extent the submitted information is identical to the information at issue in Open Records Letter Nos. 2016-20678 and 2016-21157, we conclude the county must rely on those rulings as previous determinations and withhold or release the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted arguments against disclosure of any information that was not at issue in the prior rulings.

Next, you contend the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the county's arguments under section 552.110.

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 (Tex. 2015). The county represents the remaining information pertains to a competitive bidding situation. In addition, the county states release of the information at issue would expose its strategies to the advantage of competitors. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold any remaining information under section 552.104(a) of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, to the extent the submitted information is identical to the information at issue in Open Records Letter Nos. 2016-20678 and 2016-21157, we conclude the county must rely on those rulings as previous determinations and withhold or release the information at issue in accordance with those rulings. The county may withhold any remaining information under section 552.104(a) of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 643269

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

4 Third Parties
(w/o enclosures)