



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2017

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

OR2017-02213

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# 647860 (ORR# 16OR-127).

The Comal County Sheriff's Office (the "sheriff's office") received a request for a specified contract for inmate telephone services. The sheriff's office claims the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. It also states it notified Securus Technologies, Inc. ("Securus") of the receipt by the sheriff'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.

Initially, we note most of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-25510 (2015). In that ruling, we determined the sheriff's office may not withhold the submitted information under section 552.104 or 552.110 of the Government Code but, instead, must release it in its entirety. We assume the sheriff's office did so. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its

public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Although the sheriff's office raises section 552.104 of the Government Code, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the sheriff's office may not now withhold the information at issue under section 552.104 of the Government Code. The sheriff's office also raises section 552.110 of the Government Code.¹ Although section 552.110 makes information confidential for purposes of section 552.007, this section protects the interests of private parties that provide information to governmental bodies, and not the interests of governmental bodies themselves. *See* ORD 592. Accordingly, we do not consider the arguments of the sheriff's office under section 552.110 of the Government Code, and it may not withhold any of the information at issue on that basis. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the sheriff's office must rely on Open Records Letter No. 2015-25510 as a previous determination and release the identical information in accordance with that ruling. We will address the arguments of the sheriff's office against the release of the submitted information not encompassed by Open Records Letter No.2015-25510.

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). Although the sheriff's office raises section 552.104, we find it 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 information at issue under section 552.104(a).

As discussed above, the sheriff's office may not withhold any of the information at issue on the basis of its own interests 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from

¹Section 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).

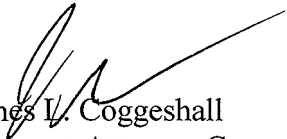
Securus explaining why the information at issue should not be released. Therefore, we have no basis to conclude Securus has a protected proprietary interest in the information at issue. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial 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 it.

We note some of 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. Thus, the sheriff'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/bw

Ref: ID# 647860

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)