



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 22, 2017

Ms. Carah-Beth Bass  
Counsel for Ector County  
Allison, Bass, & Magee, L. L. P.  
A.O. Watson House  
402 West 12<sup>th</sup> Street  
Austin, Texas 78701

OR2017-05906

Dear Ms. Bass:

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# 650841.

The Ector County purchasing agent (the "county"), which you represent, received a request for a complete copy of a specified proposal and financial offer, and a copy of a specified, fully executed, current contract. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.139 of the Government Code.<sup>1</sup> You also state release of portions of the submitted information may implicate the proprietary interests of Securus Technologies ("Securus"). Therefore, the county 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.

---

<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.104 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-2 (2002).

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) 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 Securus explaining why its information should not be released. Therefore, we have no basis to conclude Securus 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, 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 county may not withhold any of the information at issue on the basis of any proprietary interest Securus may have in it.

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 county 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 county may not withhold the information at issue under section 552.104(a).

Although the county argues that the information it has submitted is 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 § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). *See generally* Open Record Decision No. 592 (1991). Accordingly, we do not consider the arguments of the county under section 552.110 of the Government Code, and it may not withhold any of the information at issue on that basis.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or

system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). You have not demonstrated the submitted information relates to the specifics of the county's computer network security, or to the design, operation, or defense of the county's computer network as contemplated in section 552.139(a). Further, you have not demonstrated the submitted information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, the county may not withhold any of the submitted information under section 552.139 of the Government Code.

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.

As no further arguments against disclosure of the submitted information have been raised, the county must release the submitted 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/nmd

Ref: ID# 650841

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)