



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2017

Mr. Steven B. Payson
County Attorney
County of Dawson
P.O. Box 1268
Lamesa, Texas 79331

OR2017-26927

Dear Mr. Payson:

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# 686972.

The Dawson County Auditor's Office (the "county") received a request for information pertaining to request for proposals number 20170718. Although the county takes no position as to whether the submitted information is excepted under the Act, the county states release of the submitted information may implicate the proprietary interests of NCIC Inmate Communications; Prodigy Solutions; Securus Technologies, Inc.; West Texas Inmate Network; Crown Correctional Telephone; and CTEL Consolidated Telecom, Inc. ("CTEL"). Accordingly, the county states, and provides documentation showing, it notified the third parties of the request for information and of the 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 received comments from CTEL. We have reviewed the submitted arguments and the submitted information.

Initially, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from 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, 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 the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.”¹ 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. CTEL states it has competitors. In addition, CTEL states release of some of its information, which CTEL has indicated, would cause harm to its competitive position and would provide an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find CTEL has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold CTEL’s information at issue, which we have noted, under section 552.104(a) of the Government Code. As we have received no arguments against disclosure of the remaining information, the county must release it.

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

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¹Although CTEL does not cite to section 552.104 of the Government Code in its brief, we understand CTEL to raise this exception based on the substance of its argument.

Ref: ID# 686972

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)