



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2019

Mr. Vito Chavana
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2019-13397

Dear Mr. Chavana:

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# 766619 (Ref. No. 2019-0036-DA.CO).

Hidalgo County (the "county") received a request for information related to two specified requests for proposals, including submitted proposals, scoring documents, and any related communications. You claim the submitted information is excepted from disclosure under sections 552.104, 552.108, and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Bob Barker Co.; City Tele-Coin Company, Inc.; GTL; ICS Jail Supplies; ICSolutions; Keefe Group ("Keefe"); NCIC Inmate Phone Service; R&R Distributing; and Securus Technologies, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 ICSolutions and Keefe. We have considered the submitted arguments and reviewed 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 Gov't Code § 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 have 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.

Next, we note Keefe objects to disclosure of information the authority has not submitted to this office for review. This ruling does not address information that was not submitted by the county and is limited to the information the county has submitted for our review. See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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). The county and ICSolutions state they have specific marketplace interests in the information at issue. In addition, the county states release of the information at issue would impact the county’s ability to negotiate with bidders and “place the [county] at a competitive disadvantage in its future negotiations.” ICSolutions states that release of its information at issue would give a “meaningful competitive advantage” to its competitors. After review of the information at issue and consideration of the arguments, we find the county and ICSolutions have established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the county may withhold Exhibits B and C, and the additional information we marked, under section 552.104(a) of the Government Code.¹

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706.

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

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert Exhibit D consists of records related to administration, logistics, and operating procedures for the county jail’s telephone system. You state the information at issue relates directly to “internal investigative techniques and procedures” used to determine potential criminal activity of inmates. You state release of the information at issue would provide criminals with tools to anticipate weaknesses of the systems in place, or avoid detection by law enforcement. In addition, you state that release of the information at issue would jeopardize officer safety and undermine law enforcement efforts. Upon review, we find the release of portions of the information at issue, which we marked, would interfere with law enforcement. Accordingly, the county may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated the release of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the county may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

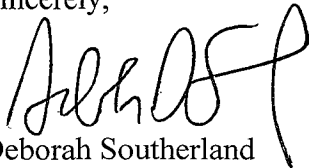
We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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.

In summary, the county may withhold Exhibits B and C, and the information we marked, under section 552.104(a) of the Government Code. The county may withhold the information we marked under section 552.108(b)(1) of the Government Code. The county must release the remaining information; however, any information that is subject to copyright may be released only 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,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 766169

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 9 Third Parties
(w/o enclosures)