



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Mr. Tillman S. Roots
Assistant District Attorney
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2020-03843

Dear Mr. Roots:

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# 810732 (File No. 19OR-144).

The Comal County Purchasing Department (the "county") received a request for a specified request for proposals and specified contracts. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Securus Technologies, Inc. ("Securus"). Accordingly, you state you notified Securus of the request for information and of its right to submit arguments to this office as to why the information at issue 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.

Initially, we note the submitted information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2018-12543 (2018). In that ruling, we determined the county must release the information at issue; however, any information that is subject to copyright may be released only in accordance with copyright law. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the submitted information is identical to the information previously requested and ruled upon, the county must continue to rely on Open Records Letter No. 2018-12543 as a previous determination and release the

identical information in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information that was not at issue in the previous ruling.

Although you raise section 552.110 of the Government Code, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Thus, we do not address your argument under section 552.110 of the Government Code. 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 Securus explaining why the submitted 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 the information at issue on the basis of any proprietary interest Securus may have in it.

We note some of the information at issue appears to 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, to the extent the submitted information is identical to the information previously requested and ruled upon, the county must continue to rely on Open Records Letter No. 2018-12543 as a previous determination and release the identical information in accordance with that ruling. The county must release the submitted information; however, the county may only release any information subject to copyright 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 810732

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)