



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2020

Ms. Alexandra Golden
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2020-07959

Dear Ms. Golden:

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# 816393.

The Brazoria County Purchasing Department (the "county") received a request for a specified contract.¹ You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state you notified Securus Technologies, Inc. ("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 exception you claim and reviewed the submitted information.

Initially, you inform us some 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. 2017-01708 (2017). In Open Records Letter No. 2017-01708, this office concluded (1) to the extent the submitted information is identical to the information at issue in Open Records Letter Nos. 2016-20678 (2016) and 2016-21157 (2016), the county must rely on those

¹ You state the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

rulings as previous determinations and withhold or release the information at issue in accordance with those rulings; and (2) the county may withhold the remaining information under section 552.104(a) of the Government Code. We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, to the extent the submitted information is identical to the information at issue in Open Records Letter No. 2017-01708, we conclude the county must rely on this ruling as a previous determination and withhold or release the information at issue in accordance with this 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted argument against disclosure of any information that was not at issue in the prior ruling.

Next, you contend the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 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). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the county's arguments under section 552.110.

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 the 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 the submitted information should not be released. Accordingly, 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 submitted information on the basis of any proprietary interest Securus may have in the information.

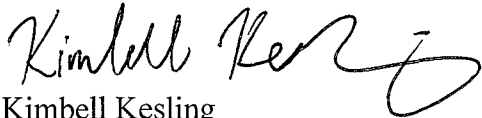
We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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 a 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 at issue in Open Records Letter No. 2017-01708, we conclude the county must rely on this ruling as a previous determination and withhold or release the information at issue in accordance with this ruling. To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2017-01708, the county must release the submitted information; however, any information that is subject to copyright law 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 <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,



Kimbell Kesling
Attorney
Open Records Division

KK/gw

Ref: ID# 816393

Enc. Submitted documents

c: Requestor
(w/o enclosures)