



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2020

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

OR2020-26707

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# 850178 (Ref. No. 20-2304).

Brazoria County (the "county") received a request for copies of specified contracts. You state the county has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code and protected by copyright law. Additionally, we understand release of the submitted information may implicate the proprietary interests of Securus Technologies ("Securus"). Accordingly, pursuant to section 552.305 of the Government Code, you were required to notify 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 reviewed the submitted information and considered the submitted arguments.

Initially, the county states some of the requested 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, we determined the county may: (1) rely on Open Records Letter Nos. 2016-20678 (2016) and 2016-21157 (2016) as previous determinations and withhold or release the information at issue in accordance with those rulings; and (2) withhold any remaining information under section 552.104 of the Government Code. However, we note the 86th Legislature recently amended section 552.104 of the Government Code. *See* Act of May 25, 2019, 86th Leg.,

R.S., S.B. 943, § 3. Therefore, we find the law regarding section 552.104 has changed. *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). Thus, the county may not rely on Open Records Letter No. 2017-01708 as a previous determination. Accordingly, we will consider the remaining arguments against disclosure of the submitted information.

Next, we understand the county seeks to withhold the submitted information based on a confidentiality clause. However, we note information is not confidential under the Act simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information falls within an exception to disclosure, the county must release it, notwithstanding any expectations or agreement specifying otherwise.

Next, we note the county raises section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets, 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(b)-(c). Although the county argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the county’s argument under section 552.110 of the Government Code.

Next, 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 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, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest Securus may have in the information.

The county asserts 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. Therefore, the county must release the submitted 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 <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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/jxd

Ref: ID# 850178

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)