



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Ms. Kathrine B. McCarty
First Assistant County Attorney
Liberty County
1923 Sam Houston Street, Suite 104
Liberty, Texas 77575

OR2022-00464

Dear Ms. McCarty:

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# 923702.

Liberty County (the "county") received three requests for certain information related to a particular request for proposals. You state the county has released some information. Although the county takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of CTEL, Inc.; Global Tel*Link Corp. ("GTL"); ICSolutions, Inc.; NCIC Inmate Communications, Inc.; Securus Technologies, L.L.C.; and Smart Communications, Inc. ("SC"). Accordingly, you state, and provide documentation showing, you notified these third parties of the requests for information and of their 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 GTL and SC. 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 to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have 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 any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

SC raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address SC’s argument under section 552.104.

GTL and SC raise section 552.110 of the Government Code for some of the information at issue. Section 552.110(b) states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Upon review, we find GTL and SC have demonstrated their information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we have indicated under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by GTL and SC, including but not limited to on their websites or social media accounts, it may not be withheld under section 552.110(c).¹ Further, we find SC failed to provide specific factual evidence demonstrating any portion of its remaining information at issue is a trade secret or constitutes commercial or financial information, the

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

release of which would result in substantial competitive harm. Therefore, the county may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). SC asserts its remaining information at issue is subject to section 552.1101(a) and would give advantage to a competitor. However, we find SC has failed to provide specific factual evidence demonstrating any portion of its information at issue is subject to section 552.1101(a). Therefore, the county may not withhold any of SC's information at issue under section 552.1101(a) of the Government Code.

SC raises section 552.117(a)(1) of the Government Code for some of the remaining information. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Upon review, we find SC has failed to demonstrate the applicability of section 552.117(a)(1) of the Government Code to the remaining information at issue. Therefore, the county may not withhold any portion of the remaining information at issue under section 552.117(a)(1) of the Government Code.

SC also raises section 552.1175 of the Government Code for some of the remaining information. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Upon review, we find SC has failed to demonstrate the applicability of section 552.1175 of the Government Code to the remaining information at issue. Therefore, the county may not withhold any portion of the remaining information at issue under section 552.1175 of the Government Code.

SC also raises section 552.1176 of the Government Code for some of the remaining information. Section 552.1176 excepts from disclosure

(a) Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.

Id. § 552.1176. Section 552.1176 only applies to information maintained under Chapter 81 of the Government Code. Chapter 81 pertains to the duties and obligations of the State Bar of Texas. *See generally id.* §§ 81.001-81.123. Accordingly, section 552.1176 only applies to records maintained by the State Bar of Texas. In this instance the information at issue is maintained by the county. Accordingly, section 552.1176 of the Government Code is not applicable to the information at issue, and it may not be withheld on this basis.

SC also raises section 552.127 of the Government Code for some of the remaining information. Section 552.127 provides that “[i]nformation is excepted from [required public disclosure] if the information identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person.” *See id.* § 552.127. SC does not explain how this section applies to any of the information at issue. Upon review, we do not find any of the information at issue to be subject to section 552.127 of the Government Code, and the county may not withhold any of it on that basis.

SC also raises section 552.130 of the Government Code for some of the remaining information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find SC has failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the county may not withhold any of the remaining information under section 552.130 of the Government Code.

We note some of the remaining 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.

In summary, the county must withhold the information we have indicated under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by GTL and SC, including but not limited to on their websites or social media accounts, it may not be withheld under section 552.110(c). 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 <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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 923702

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

5 Third Parties
(w/o enclosures)