



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2022

Ms. Tracey L. Jennings  
Assistant District Attorney  
Wichita County Criminal District Attorney's Office  
900 Seventh Street, Room 352  
Wichita Falls, Texas 76301-2482

OR2022-05725A

Dear Ms. Jennings:

This office issued Open Records Letter No. 2022-05725 (2022) on February 24, 2022. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. Consequently, this decision is substituted for Open Records Letter No. 2022-05725 and serves as the correct ruling. *See generally id.* § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). Your request was assigned ID# 946609 (ORR# 02848).

Wichita County (the "county") received a request for a specified contract, summary report, and call details during a certain time period. You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of Global Tel\*Link Corporation ("GTL"). Accordingly, the county states, and provides documentation showing, it notified GTL of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 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. We have reviewed the submitted information and considered the submitted arguments.

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<sup>1</sup> We understand the county to raise section 552.136 of the Government Code based on its markings.

Initially, we note GTL argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the county has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the county submitted as responsive to the request for information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. GTL asserts some of the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with the federal Freedom of Information Act (“FOIA”), chapter 552 of the United States Code. We note FOIA is applicable to information held by an agency of the federal government. In this instance, the information at issue is held by the county, which is subject to the laws of the State of Texas. *See* Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976); *see also Davidson v. Georgia*, 622 F.2d 895, 897 (5th Cir. 1980) (state governments are not subject to FOIA); Open Records Decision No. 561 at 7 n.3 (1990) (noting federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law). This office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.,* Attorney General Opinion MW-95; ORD 124 (fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted under Act when held by Texas governmental body). Therefore, the county may not withhold any portion of the information at issue on the basis of FOIA.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See* Gov't Code § 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). GTL argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find GTL has

demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we have marked under section 552.110(c) of the Government Code.<sup>2</sup> However, we find GTL has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the county may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the county must withhold the routing and bank account numbers you marked under section 552.136 of the Government Code. However, we find you have not demonstrated how the remaining information you marked consists of access device numbers for purposes of section 552.136. Accordingly, the county may not withhold the remaining information you marked under section 552.136 of the Government Code.

In summary, the county must withhold the information we have marked under section 552.110(c) of the Government Code. The county must withhold the routing and bank account numbers you marked under section 552.136 of the Government Code. The county must release the remaining information.

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,

Joseph Hoggatt  
Assistant Attorney General  
Open Records Division

JWH/jm

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Ref: ID# 946609

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)