



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2022

Mr. Mathew Entsminger
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2022-07669

Dear Mr. Entsminger:

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# 935880 (TCPO ID Nos. 1003210-1 & 1008402-1).

The Travis County Purchasing Office (the "purchasing office") received two requests from different requestors for information pertaining to a specified request for proposals. Although the purchasing office takes no position as to whether the submitted information is excepted under the Act, the purchasing office states release of the submitted information may implicate the proprietary interests of Global Tel*Link Corporation ("GTL"); ICSolutions ("ICS"); and Securus Technologies, LLC ("Securus"). Accordingly, the purchasing office states, and provides documentation showing, it notified each third party 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 received comments from ICS and Securus.¹ We have reviewed the submitted information and the submitted arguments.

Initially, 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 Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, we have not received comments from GTL explaining why its information should not be released. Therefore, we have no basis to conclude GTL has a protected proprietary interest in its

¹ Although Securus raises section 552.111 of the Government Code for some of the information at issue, we note section 552.111 protects the interests of governmental bodies and not third parties. *See Gov't Code § 552.111*.

information at issue, and the purchasing office may not withhold any portion of it on that basis. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

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). Securus argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Securus has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the purchasing office must withhold the information we have marked under section 552.110(c) of the Government Code.²

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 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). ICS argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find ICS has demonstrated the information at issue constitutes trade secrets. Accordingly, the purchasing office must withhold the information we have indicated under section 552.110(b) of the Government Code.

The remaining documents also include information that is subject to section 552.136 of the Government Code.³ 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”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, the purchasing office must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

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

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note 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.

In summary, the purchasing office must withhold the information we have marked under section 552.110(c) of the Government Code. The purchasing office must withhold the information we have indicated under section 552.110(b) of the Government Code. The purchasing office must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The purchasing office 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 935880

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)