



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2008

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-08662

Dear Ms. Flemming:

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# 313866.

The Texas Department of Criminal Justice (the "department") received a request for the responses to the department's request for information concerning electronic personnel monitoring technologies. Although you take no position on the public availability of the requested information, you believe that the information may implicate the interests of BI Incorporated ("BI"); G4S Justice Services, Inc.; iSecuretrac; Omnilink Systems, Inc.; RemoteMDX, Inc.; Rocky Mountain Offender Management Systems, LLC; and Sentinel Offender Services, LLC. You notified the interested parties of this request for information and of their right to submit arguments to this office as why the submitted information should not be released.¹ We have reviewed the submitted information.

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-07449 (2008). We presume that the pertinent facts and circumstances have not changed since the issuance of this prior ruling. To the extent the information at issue is identical to the information previously requested and ruled upon by this office, the department must withhold or release the information in accordance with Open Record Letter No. 2008-07449. *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

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You inform us that the information related to BI was not previously ruled upon. Therefore, we will address this submitted information.

We note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, BI has not submitted arguments to this office. Therefore, because BI has not demonstrated that any of the submitted information is proprietary for the purposes of the Act, the department may not withhold any of the information on the basis of any interest that BI may claim. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

In summary, the department must withhold or release the information previously requested in accordance with Open Record Letter No. 2008-07449. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline,

toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 313866

Enc. Submitted documents

c: Ms. Mollyrose Graves
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(w/o enclosures)

Mr. Peter Michel
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(w/o enclosures)

Mr. Wain Kellum
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Mr. Robert Contestable
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