



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2011

Mr. John T. Fleming  
County Attorney  
County of Nacogdoches  
101 West Main Street, Room 230  
Nacogdoches, Texas 75961

OR2011-18391

Dear Mr. Fleming:

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# 439122.

The Nacogdoches County Sheriff's Office (the "sheriff") received a request for a copy of the current contract for inmate telephone service at the sheriff's jail facility. You claim the submitted contract is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Infinity Networks, Inc. ("Infinity"). Thus, pursuant to section 552.305 of the Government Code, you notified Infinity of the request and of its right to submit arguments to this office as to why the submitted information should not be released. 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 to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

You generally assert the submitted information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You have not, however, directed our attention to any law, nor are we aware of any law, that makes the submitted information confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992)

(constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the sheriff may not withhold the submitted information under section 552.101 of the Government Code.

You argue the submitted contract is excepted from disclosure under section 552.110 of the Government Code. We note, however, section 552.110 is designed to protect the interests of third parties, such as Infinity, not the interests of a governmental body. Thus, we will not consider the sheriff's arguments under section 552.110, and the submitted contract may be withheld under section 552.110 based only on arguments from Infinity. 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 Infinity explaining why the submitted contract should not be released. Therefore, we have no basis to conclude Infinity has protected proprietary interests in the information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Consequently, the sheriff may not withhold the submitted contract on the basis of any proprietary interests Infinity may have in the information. Therefore, the sheriff must release the submitted contract.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 439122

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Infinity Networks, Inc.  
6601 Vaught Ranch Road, Suite 101  
Austin, Texas 78730  
(w/o enclosures)