



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2013

Mr. Gerard A. Calderon
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205

OR2013-16779

Dear Mr. Calderon:

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# 500557.

Bexar County (the "county") received two requests from the same requestor for the following categories of information pertaining to the county's request for proposals #RFP-2012-011, Offender Paid Electronic Monitoring Program: (1) copies of all proposals submitted by proposing vendors, excluding the proposal submitted by the requestor; (2) all documents provided by the vendors as part of any vendor meetings or presentations; (3) any evaluation notes, scoring, and ranking of the proposals received; (4) any written communication between the county and Recovery Healthcare Corporation ("Recovery"); and (5) a copy of the proposed contract between the county and Recovery, including pricing information. Although you state the county takes no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of Geo Care, LLC ("Geo"), Recovery, SecureTracks GPS ("SecureTracks"), Sentinel Offender Services, LLC ("Sentinel"), and Smart Start, Inc. ("Smart Start"). Accordingly, you state and provide documentation showing, you have notified these third parties of the request 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We

have received comments from Recovery. We have reviewed the submitted representative sample of information and the submitted arguments.¹

Initially, we note the requestor specifically requested only proposals submitted by the requestor's competitors. We note the requestor is a representative of Sentinel. Based on our review of the request and the submitted information, we find information relating to Sentinel is not responsive to the instant request. This letter ruling does not address the public availability of non-responsive information, and the county is not required to release non-responsive information in response to this request.

We also note you have only submitted bid proposals for our review. To the extent information responsive to the remainder of the request existed on the date the county received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note the proposals submitted by Recovery, SecureTracks, and Smart Start were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-16737 (2013). In that ruling, we found the county must withhold the information we marked in the proposals submitted by Recovery, SecureTracks, and Smart Start under sections 552.110(a) and 552.136 of the Government Code, and release the remaining responsive information in accordance with copyright law. As we have no indication there has been any change in the law, facts, and circumstances on which the previous ruling was based, we conclude the county must withhold or release the proposals of Recovery, SecureTracks, and Smart Start in accordance with Open Records Letter No. 2013-16737. *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 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).

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 information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Geo explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude Geo has protected proprietary interests in the information. *See id.* § 552.110; Open Records

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 county may not withhold any of the submitted information on the basis of any proprietary interests Geo may have in the information.

Section 552.136(b) of the Government Code states that “[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.”² Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the county must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

We also note that some of the remaining information 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. *See* Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also* 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 rely on Open Records Letter No. 2013-16737 as a previous determination and withhold or release information at issue in that ruling in accordance with it. The county must withhold the information we have marked under section 552.136 of the Government Code. The county must release the remaining information, but any information protected by 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 <http://www.texasattorneygeneral.gov/open/>

²The 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).

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 500557

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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