



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2014

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

**The ruling you have requested has
been amended as a result of litigation
and has been attached to this
document.**

OR2014-07340

Dear Ms. Rangel:

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# 521318.

Fort Bend County (the "county") received a request for the evaluations and proposals pertaining to RFP# 13-058. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Global Tel*Link ("GTL"); Inmate Calling Solutions, L.L.C. ("ICS"); Network Communications Internal Corporation ("Network Communications"); Legacy Inmate Communications ("Legacy"); and Synergy Telecom Service Company, Inc. ("Synergy") 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(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, ICS, and Legacy. We have considered the submitted arguments and reviewed the submitted information.

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 Network Communications or Synergy explaining why their information should not be released. Therefore, we have no basis to conclude Network Communications or Synergy have protected proprietary interests in the submitted 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. Accordingly, the county may not withhold any of the information at issue on the basis of any proprietary interest of Network Communications or Synergy may have in it.

GTL asserts that some of its information is excepted 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. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). GTL has not directed our attention to any law under which any of its information is considered to be confidential for the purposes of section 552.101. Therefore, we conclude that the county may not withhold the submitted information under that section.

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

Next, GTL, ICS, and Legacy each claim portions of their information are excepted under section 552.110 of the Government Code, which protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(a), (b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving

materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

Upon review, we find GTL and Legacy have established their customer information constitutes trade secrets. Accordingly, to the extent the customer information at issue is not publicly available on GTL’s or Legacy’s website, the county must withhold GTL’s and

¹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Legacy's customer information under section 552.110(a). However, we find GTL and Legacy have failed to demonstrate that any of their remaining information, and ICS has failed to demonstrate any of its submitted information, meets the definition of a trade secret, nor have GTL, Legacy, or ICS demonstrated the necessary factors to establish a trade secret claim for this information. *See* Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Thus, none of GTL's and Legacy's remaining information or ICS's submitted information may be withheld under section 552.110(a) of the Government Code.

Upon review of the submitted arguments under section 552.110(b), we find ICS has established its commission rate information, which we have marked, constitutes commercial or financial information, the release of which would cause ICS substantial competitive injury. Furthermore, we find Legacy has established some of its remaining information constitutes commercial or financial information, the release of which would cause Legacy substantial competitive injury. Therefore, the county must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find GTL, Legacy, and ICS have not demonstrated the release of any of the remaining information would result in substantial damage to their competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, none of the remaining information may be withheld under section 552.110(b).

We note some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 states that "[n]otwithstanding any other provision of this chapter, 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." Gov't Code § 552.136. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, we find the county must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, to the extent the customer information at issue is not publicly available on GTL's or Legacy's website, the county must withhold GTL's and Legacy's customer information under section 552.110(a) of the Government Code. The county must also withhold the information we have marked under section 552.110(b) of the Government Code. The county must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The county must release the remaining information, but any information protected by copyright may only be released 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/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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 521318

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. James L. Calis
Associate General Counsel
Global Tel*Link
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190
(w/o enclosures)

Mr. Darryl Hughes
Legacy Inmate Communications
10833 Valley View Street
Cypress, California 90630
(w/o enclosures)

Mr. Ken Dawson
Inmate Calling Solutions
2200 Danbury Street
San Antonio, Texas 78217
(w/o enclosures)

Mr. William Pope
Network Communications International Corp.
c/o Michelle T. Rangel
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469
(w/o enclosures)

Mr. Charles Slaughter
Synergy Telecom Service Company
c/o Michelle T. Rangel
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469
(w/o enclosures)

OCT 20 2014

At 3:40 P.M. Amalia Rodriguez

Cause No. D-1-GN-14-001692

GLOBAL TEL*LINK CORPORATION,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
GREG ABBOTT, AS ATTORNEY	§	353rd JUDICIAL DISTRICT
GENERAL OF THE STATE OF TEXAS	§	
and ROY L. CORDES, JR., AS COUNTY	§	
ATTORNEY, FORT BEND COUNTY,	§	
TEXAS,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act ("PIA"), Tex. Gov't Code ch. 552, in which Global Tel*Link Corporation ("GTL"), sought to withhold certain information which is in the possession of Fort Bend County from public disclosure. All matters in controversy between Plaintiff, GTL, and Defendant, Greg Abbott, Attorney General of Texas ("Attorney General"), arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Sally Zeitvogel, on September 26, 2014, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that Fort Bend County will be instructed to withhold the designated portions of the information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. A copy

of the certified mail receipt is attached to this Agreed Final Judgment. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Pursuant to Tex. Gov't Code § 552.110, Fort Bend County will be instructed that in accordance with the PLA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Tex. Gov't Code §552.110(b) and must be withheld. GTL will provide Fort Bend County with a copy of the information at issue bates-stamped pages 917-941 with the agreed upon numbers and percentages redacted. Fort Bend County has agreed to abide by the terms of this Agreed Final Judgment, as evidence by the Rule 11 Agreement attached hereto as Exhibit B.

Fort Bend County will also be instructed that after redaction, the remaining information on these pages must be released to the requestor, and the remainder of the information at issue must be released or withheld in accordance with Attorney General open records letter ruling OR2014-001692.

2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between GTL and the Attorney General and is a final judgment.

~~SIGNED the _____ day of _____, 2014.~~

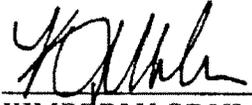
GN-14-001692
SIGNED October 20, 2014.


PRESIDING JUDGE

AGREED:


KIMBERLY FUCHS
State Bar # 24044140
Chief, Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
Kimberly.Fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT, GREG ABBOTT


KIMBERLY GDULA
State Bar No. 24052209
Jackson Walker, LLP
100 Congress Ave., Suite 1100
Austin, TX 78701
Telephone: (512) 236-2000
Facsimile: (512) 236-2002
KGdula@jw.com

ATTORNEY FOR PLAINTIFF, GLOBAL TEL*LINK CORPORATION

EXHIBIT A

SETTLEMENT AGREEMENT

Cause No. D-1-GN-14-001692

GLOBAL TEL*LINK CORPORATION,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
	§	
v.	§	
	§	353rd JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF THE STATE OF TEXAS	§	
<i>Defendant.</i>	§	
	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Global Tel* Link Corporation ("GTL") and Greg Abbott, Attorney General of Texas ("Attorney General"). This Agreement is made on the terms set forth below.

Background

On February 11, 2014 Fort Bend County received a request for information under the Public Information Act ("PIA") from Ms. Sally Zietvogel. The request included information submitted by GTL to Fort Bend County. Fort Bend County made GTL aware of this request.

Fort Bend County asked for an open records ruling from the Attorney General, pursuant to the PIA, Tex. Gov't Code § 552.301. GTL submitted comments to the Attorney General, asserting, in pertinent part, that the information was excepted from disclosure by Tex. Gov't Code § 552.110.

In Letter Ruling OR2014-07340, the Open Records Division of the Attorney General ("ORD") allowed GTL to withhold customer information under §552.110(b), but required it to release other information GTL claims is proprietary. The Attorney

General found that GTL failed to meet its burden of showing that the information met the definition of a trade secret and that GTL's claim that it would suffer substantial competitive harm was speculative.

GTL disputed the ruling and filed the above styled and captioned lawsuit to preserve its rights under the PIA.

GTL submitted additional information to the Attorney General establishing that some of the information at issue was confidential under Tex. Gov't Code §552.110(b). Attorney General has reviewed GTL's request and agrees to the settlement.

Tex. Gov't Code §552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Pursuant to Tex. Gov't Code § 552.110, Fort Bend County will be instructed, that that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Tex. Gov't Code §552.110(b) and must be withheld. GTL will provide Fort Bend County with a copy of bates-stamped pages 917-941 of the information at issue with the agreed upon numbers and percentages redacted.

Fort Bend County will also be instructed that after redaction, the remaining information on these pages must be released to the requestor, and the remainder of the information at issue must be released or withheld in accordance with Attorney General open records letter ruling OR2014-001692.

2. GTL and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor.

3. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of her right to intervene to contest GTL's right to have Fort Bend County withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

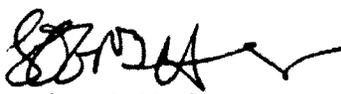
7. GTL warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that GTL has against the Attorney General arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and

settlement and release of all claims that the Attorney General has against GTL arising out of the matters described in this Agreement.

9. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

GLOBAL TEL* LINK CORPORATION

By: 
name: Jeffrey B. Haidinger
title: President and COO

Date: 9/24/14

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: 9/25/14