



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2017

Mr. William T. Little
Assistant County & District Attorney
Ellis County
109 South Jackson Street
Waxahachie, Texas 75165

OR2017-24386

Dear Mr. Little:

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# 682037.

The Ellis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to contracts with RELX, Inc. d/b/a LexisNexis ("LexisNexis"). You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state, and provide documentation demonstrating, you notified LexisNexis 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 considered the exceptions you claim and reviewed the submitted information.

Section 552.110 of the Government Code 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* Gov't Code § 552.110(a)-(b). Although the district attorney's office argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district attorney's office's argument under section 552.110.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from LexisNexis explaining why the submitted information should not be released. Therefore, we have no basis to conclude LexisNexis has a protected proprietary interest 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 party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district attorney's office may not withhold the submitted information on the basis of any proprietary interest LexisNexis may have in the information.

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). Although the district attorney's office raises section 552.104, we find it has failed to demonstrate the release of the submitted information would give advantage to a competitor or bidder. Thus, the district attorney's office may not withhold any portion of the submitted information under section 552.104(a) of the Government Code.

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."¹ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, the district attorney's office must withhold the bank account number we have marked under section 552.136 of the Government Code.

We note 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. 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.

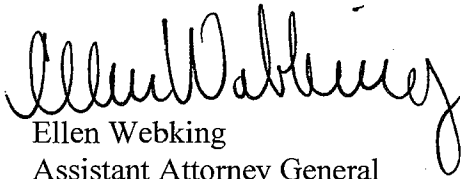
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the district attorney's office must withhold the bank account number we have marked under section 552.136 of the Government Code. The district attorney's office must release the remaining information; however, 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/tdw

Ref: ID# 682037

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)