



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2019

Mr. Tillman S. Roots
Assistant District Attorney
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2018-01812

Dear Mr. Roots:

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# 747260 (18OR-139).

The Comal County District Attorney's Office (the "district attorney's office") received a request for information pertaining to specified contracts. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state release of this information may implicate the proprietary interests of LexisNexis. Accordingly, you state, and provide documentation showing, you notified the interested third party of the request for information and of its right to submit arguments to this office as to why the information at issue 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.

The district attorney's office contends the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person 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)*. We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991).

Accordingly, we do not address the district attorney's office's arguments 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) of the Government Code 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 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 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 district attorney's office may not withhold any portion of the submitted information on the basis of any proprietary interest LexisNexis may have in the information.

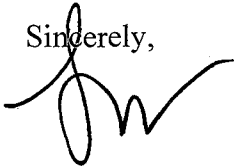
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). While you argue the release of the submitted information could give an advantage to a competitor or bidder of LexisNexis, such an interest in protecting the information belongs to the third party and not the district attorney's office. Therefore, we find the district attorney's office may not withhold the submitted information under section 552.104(a) of the Government Code.

We note some of the submitted 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. Accordingly, the district attorney's office must release the submitted information; however, any information subject to 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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 747260

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)