



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Mr. Joseph T. Longoria
Counsel for the Montgomery Central Appraisal District
Purdue Brandon Fielder Collins & Mott, LLP
1235 North Loop West, #600
Houston, Texas 77008

OR2019-03960

Dear Mr. Longoria:

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# 750125.

The Montgomery Central Appraisal District (the "district"), which you represent, received a request for three categories of information pertaining to LexisNexis Risk Solutions and LexisNexis Homestead Exemption Fraud Detection Solution. Although we understand 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 LexisNexis.¹ Accordingly, you state, and provide documentation showing, you notified LexisNexis of the request for information and of its right to submit arguments to this office as to why the

¹We note the district failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e). Nonetheless, third party interests and section 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by failure to comply with, section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). We note the 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). Thus, we will consider whether the submitted information is excepted from disclosure based on the interests of third parties and based on section 552.136, notwithstanding the district's violation of section 552.301 in requesting this decision. We also note that although you raise sections 552.104, 552.110, and 552.149 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

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 LexisNexis. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you only submitted a proposal for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* 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).

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. LexisNexis states it has competitors. In addition, LexisNexis states the information at issue would be used by its competitors "to the specific and immediate detriment of LexisNexis if released." After review of the information at issue and consideration of the arguments, we find LexisNexis has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we have marked under section 552.104(a) of the Government Code.²

We note some of the remaining information is subject to section 552.136 of the Government Code. 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 district must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

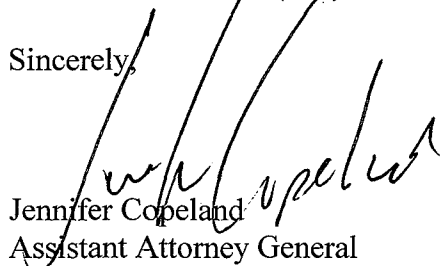
In summary, the district may withhold the information we have marked under section 552.104(a) of the Government Code. The district must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The remaining information must be released.

²As our ruling on this information is dispositive, we need not address LexisNexis's remaining arguments against its disclosure.

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 Copeland
Assistant Attorney General
Open Records Division

JC/som

Ref: ID# 750125

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)