ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2005

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A & M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2005-09753

Dear Mr. Kelly:

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# 234219.

The Texas A & M University System (the "system") received a request for (1) any and all contracts between Texas A & M and Lexicon Genetics, Inc. ("Lexicon") concerning the Texas Institute for Genomic Medicine ("TIGM"), and (2) any and all documents, including a proposal, submitted by Lexicon concerning TIGM. Although you take no position with respect to the requested information, you claim that it may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, you notified interested third party Lexicon of the request and of its opportunity to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received correspondence from an attorney for Lexicon. We have considered the submitted arguments and reviewed the submitted information.

Lexicon claims that certain information relating to its fees and royalty structure is excepted from disclosure under section 552.110(b) of the Government Code. This section excepts from disclosure "[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized

allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Based on our review of Lexicon's arguments and the submitted information, we are unable to conclude that Lexicon has met its burden of demonstrating that release of the information at issue would cause the company substantial competitive harm. *See* Open Records Decision No. 661 at 5-6. Therefore, none of the information at issue may be withheld pursuant to section 552.110(b).

We note, however, that some of 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. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990). Therefore, the submitted information must be released, but any copyrighted information must be released in accordance with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

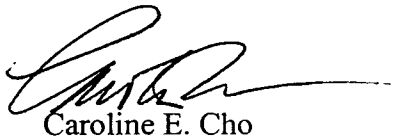
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 234219

Enc. Submitted documents

c: Mr. Craig Kapitan
The Bryan-College Station Eagle
P.O. Box 3000
Bryan, Texas 77802
(w/o enclosures)

Mr. Brian T. Crum
Senior Corporate Counsel
Lexicon Genetics, Inc.
8800 Technology Forest Place
The Woodlands, Texas 77381-1160
(w/o enclosures)