



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2013

Mr. David Kemp
First Assistant County Attorney
Potter County Attorney's Office
500 South Fillmore Street, Room 301
Amarillo, Texas 79101

OR2013-21158

Dear Mr. Kemp:

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# 507687.

The Potter County Attorney's Office (the "county attorney's office") received a request for (1) all current contracts with LexisNexis ("Lexis") for online legal research and information services; (2) purchase orders, delivery orders, invoices, or modifications/amendments issued to or paid to Lexis for online legal research or information services for fiscal years 2012 through 2014; and (3) proposals submitted by Lexis. You state you will release information responsive to item number two to the requestor. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of Lexis. Accordingly, you inform us, and provide documentation showing, you notified Lexis of the request and of its right to submit comments to this office as to why the submitted information should not be released to the requestor. *See Gov't Code* § 552.305(d); *see also* 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 under the Act in certain circumstances). We have reviewed the submitted information.

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 Lexis on why the company's submitted information should not be released. Therefore, we

have no basis to conclude Lexis 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 county attorney's office may not withhold any portion of the submitted information on the basis of any proprietary interest Lexis may have in it.

We note portions of the submitted information are subject to sections 552.102 and 552.136 of the Government Code.¹ Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the county attorney's office must withhold the birth date of the county attorney's office employee we have marked under section 552.102 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the county attorney's office must withhold the routing, bank account, and credit card numbers we have marked under section 552.136 of the Government Code.²

We note some of the information 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 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 mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

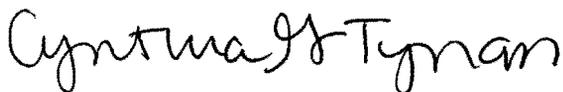
²We note section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

In summary, the county attorney's office must withhold the employee birth date we have marked under section 552.102(a) of the Government Code, and the routing, bank account, and credit card numbers we have marked under section 552.136 of the Government Code. The remaining information must be released; however, any information that is subject to copyright may be released only in accordance with copyright law.³

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 507687

Enc. Submitted documents

c: Requestor
(w/o enclosures)

LexisNexis Risk Solutions FL, Inc.
1000 Alderman Drive
Alpharetta, Georgia 30005
(w/o enclosures)

³We note the remaining information contains a partial social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).