ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2007

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342-4004

OR2007-03946

Dear Ms. Fleming:

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# 275347.

The Texas Department of Criminal Justice (the "department") received a request for the following: (1) a copy of any and all current contracts the department has for online legal research with LexisNexis; (2) a copy of any and all purchase orders, delivery orders, invoices, and/or any modifications or amendments issued to or paid to LexisNexis for online legal research and/or information services for FY2005-2007; and (3) a copy of any and all proposals submitted by LexisNexis pursuant to the award of a contract or release of a purchase order, delivery order and/or modification order." You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information implicates the proprietary interests of a private party, LexisNexis, who responded to the RFI. You inform this office that the department notified LexisNexis under section 552.305 of the Government Code of the request for information and of their right to submit arguments to this office as to why information that they submitted to the department should not be released.[1] We received written arguments from LexisNexis. We have considered the submitted arguments and have reviewed the submitted information.

We first note that the submitted information does not include information pertaining to items 1 and 2 of the request for information. We therefore assume that the department has released any information that is responsive to that aspect of the request, to the extent that

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[1] *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances).

such information existed when the department received the request. If not, then the department must release any such information at this time. *See* Gov't Code §§ 552.301, .302; 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 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform this office that the department has "posted an RFI soliciting information on the latest products available in case law automated systems." You also inform us that the department "has not contracted with LexisNexis with respect to its proposal in response to [the department's] RFI soliciting automated case law systems and pricing estimates." Further, you state that the department's "award of any contract is subject to further bid, in the form of a response to a request for proposal . . . or request for offer." Based on your representations and our review, we conclude that the submitted information may be withheld from disclosure at this time under section 552.104 of the Government Code. As we are able to make this determination, we need not address the remaining arguments.

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

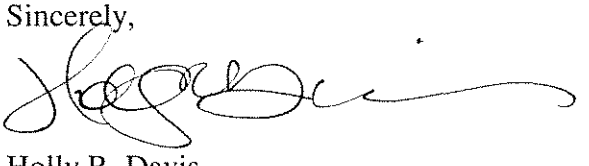
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 275347

Enc. Submitted documents

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