



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2009

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston
311 East Cullen Building
Houston, Texas 77204-2028

OR2009-12679

Dear Mr. Bentley:

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# 354652.

The University of Houston (the "university") received a request for several categories of information pertaining to proposals or bids for the operation of the on-campus bookstore. You state you only have information responsive to one of the categories of requested information.¹ Although you raise no exception to disclosure of the submitted sales reports on behalf of the university, you state that the submitted information may contain proprietary information. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the university notified Barnes & Noble College Booksellers, Inc. ("Barnes & Noble"), the interested third party, of the request for information and of the company's right to submit arguments explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from a representative of Barnes & Noble. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that a portion of the requested information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-01053 (2009) and 2006-13810 (2006). With regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior rulings, we conclude that, as we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the university must continue to rely upon Open Records Letter Nos. 2009-01053 and 2006-13810 as previous determinations and withhold or release the identical information in accordance with these rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances, on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling; ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information is not encompassed by the previous rulings, we will address Barnes & Noble's arguments against disclosure.

Section 552.110(b) protects the proprietary interests of third parties by excepting from disclosure commercial 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. *See* 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 information at issue. *Id.*; *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Although Barnes & Noble has submitted arguments asserting that its "Detailed Sales Report" is excepted from disclosure under section 552.110(b), Barnes & Noble has not submitted any arguments against disclosure for the submitted information, which consists of monthly sales reports and documents titled "Quarterly Sales Report." Because Barnes & Noble has not submitted any arguments against disclosure for the submitted sales reports, we find that Barnes & Noble has failed to make the specific factual and evidentiary showing required by section 552.110(b) that release of the information at issue would cause the company substantial competitive harm. *See* ORD 661 at 5-6 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the university may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been raised, the submitted information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 354652

Enc: Submitted documents

cc: Requestor
(w/o enclosures)

cc: Ms. Suzanne M. Berger
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