



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2010

Ms. Neera Chatterjee  
Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2010-00581

Dear Ms. Chatterjee:

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# 366966.

The University of Texas at Dallas (the "university") received a request for all proposals related to the most recent bookstore management proposal process. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state that the submitted documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you provide documentation showing that the university notified Barnes & Noble College Booksellers, Inc. ("Barnes & Noble"); MT Busse, Inc. ("Busse"); and Follett Higher Education Group ("Follett") of the request for information and of their right to submit arguments to this office as to why the 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). Barnes & Noble and Busse have submitted comments to this office. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2009-17026

(2009). In that decision, we ruled that the university may withhold the information at issue under section 552.104 of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the university may continue to rely on Open Records Letter No. 2009-17026 as a previous determination and withhold the same information in accordance with the previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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).<sup>1</sup>

We now address your arguments against disclosure of the remaining information. Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state that while the bidding has closed, the contract for bookstore services has not been executed. You also state negotiations are ongoing and the university may "have to revisit other submitted proposals to determine an alternate choice from the remaining vendors." You further state that because the contract has not been executed, release of the submitted information at this time would place the university at a disadvantage in obtaining a fair contract should the initial negotiations fail. Based on your representations and our review, we conclude the university has demonstrated that release of the remaining information would harm its interests in a competitive situation. Accordingly, the university may withhold the remaining submitted information under section 552.104 of the Government Code until the contract is executed.<sup>2</sup>

In summary, the university may continue to rely on Open Records Letter No. 2009-17026 as a previous determination and withhold the same information in accordance with the previous

---

<sup>1</sup>As we are able to make this determination, we need not address Busse's arguments under section 552.110 of the Government Code.

<sup>2</sup>As our ruling is dispositive of this information, we need not address Barnes and Noble's arguments under section 552.110 of the Government Code.

determination. The university may withhold the remaining information under section 552.104 of the Government Code.

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](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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/dls

Ref: ID# 366966

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Melissa Hutton  
President MT. Busse, Inc.  
Off Campus Bookstore  
561 West Campbell Road, Suite 201  
Richardson, Texas 75080  
(w/o enclosures)

Mr. Gary Fitzgerald  
Barnes & Noble College Booksellers, Inc.  
120 Mountainview Boulevard  
Basking Ridge, New Jersey 07920-3454  
(w/o enclosures)

Ms. Suzanne M. Berger  
Bryan Cave  
For Barnes & Noble College Booksellers, Inc.  
1290 Avenue of the Americas  
New York, New York 10104-3300  
(w/o enclosures)

Mr. Alan Stratman  
Follett Higher Education Group  
1818 Swift Drive  
Oak Brook, Illinois 60523-1576  
(w/o enclosures)