



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 14, 2010

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

OR2010-05322

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# 375795.

Texas A&M University (the "university") received a request for the final contract and month-to-month sales reports from April 1, 2009, to the date of the request pertaining to the on-campus bookstore vendor. You state you are releasing the contract. You state you take no position on release of the requested information. You also explain that the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified Barnes & Noble College Booksellers, Inc. ("Barnes & Noble") of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have also considered comments from Barnes & Noble and reviewed the submitted information.

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request because it is outside the requested date range. The university need not release non-responsive information in response to this request, and this ruling will not address such information.

Next, we address Barnes & Noble's argument that the university should be able to reject requests for disclosure of the same types of documents for subsequent years. Barnes & Noble states this office issued Open Records Letter Ruling No. 2006-13345 in which we ruled the university may withhold a portion of the requested information under section 552.110. We note, however, the documents at issue in 2006-13345 are not the same documents at issue in the present ruling. Therefore, because the documents are not the same as in Open Records Letter No. 2006-13345, the university may not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). Accordingly, we will address the arguments with regard to the submitted information.

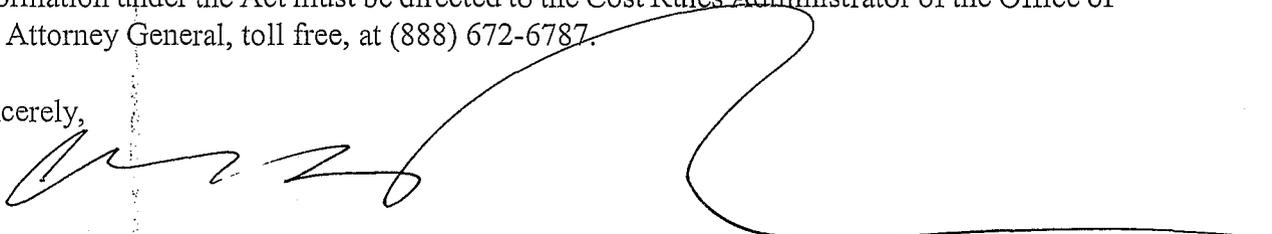
Section 552.110 of the Government Code protects the proprietary interests of third parties by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which 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(a), (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* Open Records Decision No. 661 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

Barnes & Noble states it does not object to disclosure of its "Annual Commission Statement." Barnes & Noble states its detailed sales reports are used to develop its own strategic plan for the university. Upon review of the submitted information, we conclude Barnes & Noble has made a specific factual or evidentiary showing that release of the detailed sales reports, which we have marked, would cause it substantial competitive harm. Therefore, the university must withhold this information pursuant to section 552.110(b). However, Barnes & Noble has failed to demonstrate how the release of the remaining information would result in substantial competitive harm to its company. Therefore, the remaining information may not be withheld under section 552.110(b). As Barnes & Noble makes no further arguments against the disclosure of the remaining information, it must be released.

We understand Barnes & Noble to ask this office to issue a previous determination with respect to any future request for the same types of records. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 375795

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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