



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Mr. R. Brooks Moore
Assistant General Counsel
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2010-14063

Dear Mr. Moore:

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# 393829 (TAMU No. 10-331).

Texas A&M University (the "university") received a request for: 1) all monthly, quarterly, and annual sales reports received from the operator of the MSC Bookstore since January 1, 2009, and 2) a copy of the current lease with Barnes & Noble College Booksellers, Inc. ("Barnes & Noble") for bookstore operation, including supporting documents. You state the university has released information responsive to item two of the request. Although the university takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Barnes & Noble. Accordingly, you state, and provide documentation showing, the university notified Barnes & Noble of the university's receipt of the request for information and of the company's right to submit arguments to this office as to why its information should not be released to the requestor. *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). We have considered comments submitted by Barnes & Noble and reviewed the submitted information.¹

¹We note Barnes & Noble does not object to the release of some of its submitted information.

Initially, Barnes & Noble argues the information it seeks to withhold is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-05322 (2010). In Open Records Letter Ruling No. 2010-05322, we ruled the university must withhold certain detailed sales reports under section 552.110. We note, however, the sales reports at issue in that ruling cover a different time period than those at issue in the present ruling. Therefore, the university may not rely on that ruling as a previous determination. *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). Accordingly, we will address Barnes & Noble's arguments against disclosure.

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 seeks to withhold its detailed sales reports in pages 4 through 5 and 7 through 8 of Exhibit B under section 552.110(b) of the Government Code. Barnes & Noble argues the release of this information would cause the company substantial competitive harm. After reviewing the submitted arguments and the information at issue, 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). As Barnes & Noble makes no arguments against the disclosure of the remaining submitted information, it 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 393829

Enc. Submitted documents

c: Requestor
(w/o enclosures)