



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 16, 2010

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

OR2010-14814A

Dear Mr. Moore:

Our office issued Open Records Letter No. 2010-14814(2010) on September 29, 2010. In that ruling, we addressed a request made to Texas A&M University-Texarkana (the "university") for information regarding the operation of a request for proposals for the operation of the university's on-campus bookstore. The university states it notified all third parties of the request, and of their right to submit arguments to this office as to why their information should not be released.<sup>1</sup> See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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). However, we have since received comments from Barnes & Noble stating it did not receive notification from the university of the request for its proposal and was therefore not provided the opportunity to submit any arguments. In light of Barnes & Noble's comments, we have decided to issue a reconsideration with respect to any proprietary interest Barnes & Noble may have in the information at issue. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on September 29, 2010. See generally Gov't Code

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<sup>1</sup>The interested third parties were Texas Book Company, Barnes & Noble College Booksellers ("Barnes & Noble"), Follett Higher Education Group, Inc. ("Follett"), and M.T. Busse, Inc. ("Busse").

§ 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 404086.

The university received a request for four categories of information pertaining to proposals submitted in response to RFP10-031010 by prospective bookstore operators for the operation of the university's on-campus bookstore. You state you have released information responsive to categories two and three of the request. You state that with the exception of the 2010 contract, which you state you have released, the university does not maintain information responsive to category four of the request.<sup>2</sup> The university takes no position on whether the submitted proposals are excepted from disclosure. However, as previously noted, the university notified Texas Book Company, Barnes & Noble, Follett, and Busse of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d). We have received comments from Barnes & Noble. We have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). We have not received timely correspondence from Texas Book Company, Follett, or Busse. Thus, none of these third parties have demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the university may not withhold the submitted information on the basis of any proprietary interests Texas Book Company, Follett, or Busse may have in the information.

Section 552.110(b) protects "[c]ommercial 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[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely

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<sup>2</sup>In responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

Upon review of Barnes & Noble's arguments and the information at issue, we find that Barnes & Noble has established that its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause Barnes & Noble substantial competitive harm. Therefore, the university must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find Barnes & Noble has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information at issue would cause Barnes & Noble substantial competitive harm. Thus, no portion of the remaining information at issue may be withheld under section 552.110(b) of the Government Code.

We note the submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>3</sup> Gov't Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the university must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.<sup>4</sup>

In summary, the university must withhold the information we have marked under section 552.110(b) of the Government Code. The university must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining 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

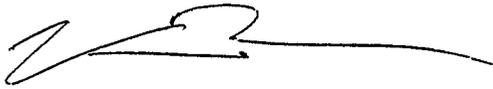
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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note that this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 404086

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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