



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Ms. Talibah P. Young
Assistant General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2011-18621

Dear Ms. Young:

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# 440304.

The University of Houston (the "university") received a request for a copy of a specified contract between the university and Barnes & Noble, payments made to the university in 2010 by Barnes & Noble, and the gross sales for 2010 of the university's Barnes & Noble bookstore. You state you have released a copy of the requested contract and payment information. Although you take no position on whether the requested gross sales information is excepted from disclosure, you state release of this information may implicate the proprietary interests of a third party, Barnes & Noble. Accordingly, the university notified Barnes & Noble of the request for information and its right to submit arguments explaining why the submitted 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 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 reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Barnes & Noble explaining why the submitted information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes the proprietary information of this company. *See id.* § 552.110; 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Consequently, the university may not withhold the submitted information on the basis of any proprietary interests Barnes & Noble may have in the information. 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

Ref: ID# 440304

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Kimberly Otte
Vice President
Barnes & Noble
2605 Sagebrush Drive, Suite 102
Flower Mound, Texas 75028
(w/o enclosures)

Ms. Kimberly Otte
Vice President
Barnes & Noble
120 Mountainview Boulevard
Basking Ridge, New Jersey 07920
(w/o enclosures)