



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2012

Ms. Nancy Nelson  
Associate Vice President  
Employee Relations  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2012-08365

Dear Ms. Nelson:

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# 455072.

The El Paso Community College District (the "district") received a request for documents and materials submitted for request for proposal number 11-0123 for bookstore services other than those submitted by the requestor, the resulting contract, any committee notes, and correspondence between prospective or successful bidders and the committee members. You state you have released some of the requested information. Although the district takes no position on the public availability of the submitted information, you state the release of the submitted information may implicate the proprietary interests of Barnes & Noble College Booksellers, LLC ("Barnes & Noble"). Accordingly, you notified 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 reviewed the submitted information.

Initially, we note that 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 that party 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. Therefore, we have no basis to conclude that Barnes & Noble has a protected proprietary interest in the submitted information. *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, 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. Accordingly, the district may not withhold the submitted information based upon the proprietary interests of Barnes & Noble.

We note the submitted information contains insurance policy numbers subject to section 552.136 of the Government Code. Section 552.136 provides in part 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the district 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 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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 455072

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Janine von Juergenson  
Barnes & Noble College Bookstores, Inc.  
120 Mountain View Boulevard  
Basking Ridge, New Jersey 07920  
(w/o enclosures)