



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 20, 2006

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

OR2006-07845

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# 255388.

Texas A&M University-Corpus Christi (the "university") received three requests for information regarding a specific request for proposals ("RFP"). The first requestor seeks all proposals received in response to the RFP, along with the bookstore management agreement between the university and a specific company. The second requestor seeks the proposals submitted in response to the RFP by four named companies. The third requestor seeks only certain information from the proposals.¹ Although you claim no exceptions to disclosure, you assert that release of the submitted information may implicate the proprietary interests of a third party. Pursuant to section 552.305 of the Government Code, you notified Barnes & Noble College Booksellers, Inc. ("Barnes") of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305

¹The university informs us that it previously requested a ruling regarding these requests for information, which this office issued in Open Records Letter No. 2006-04981 (2006). In that ruling, we noted that Barnes sought to withhold Exhibits D and F of its proposal, which were not submitted to this office by the university for our review. The university informs us that these exhibits were inadvertently omitted from the university's initial request, and has now submitted Exhibits-D and F for our consideration. Thus, we will incorporate Barnes previously submitted comments regarding Exhibits D and F to this ruling.

permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the university has not complied with the statutory deadlines prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider if any of the submitted information must be withheld to protect Barnes' interests.

Barnes claims that Exhibits D and F are excepted from disclosure under section 552.110(b) of the Government Code, which excepts from disclosure "[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." 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 requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Barnes asserts that the Exhibits D and F are proprietary commercial information the release of which would cause it harm. After reviewing Barnes' arguments and the submitted information, we agree that the release of Exhibits D and F of Barnes' proposal would result in significant competitive harm to the company's interests for purposes of section 552.110(b). Accordingly, the university must withhold Exhibits D and F of Barnes' proposal under section 552.110(b) of the Government Code.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 255388

Enc. Submitted documents

c: Ms. Suzanne M. Berger
Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104-3300
(w/o enclosures)

Mr. Brent Dyer
Texas Book Company
P. O. Box 212
Greenville, Texas 75403
(w/o enclosures)

Mr. Victor Ruiz
Owner
The Islander Bookstore
6133 South Alameda Street
Corpus Christi, Texas 78412
(w/o enclosures)

Mr. Alan Stratman
Vice President of Marketing
Southwestern Region
Follett Higher Education Group
1818 Swift Drive
Oak Brook, Illinois 60523-1576
(w/o enclosures)