



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2009

Ms. Lauri Schneidau Ruiz
Assistant General Counsel
University of Houston System
East Cullen Building, Suite 311
Houston, Texas 77204-2162

OR2009-01053

Dear Ms. Ruiz:

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# 333837.

The University of Houston (the "university") received a request for the monthly accounting of sales from January 2004 to the present, by location and department, as reported by Barnes & Noble College Booksellers, Inc. ("Barnes & Noble") to the university. While you raise no exceptions on behalf of the university regarding the requested information, you indicate that it may contain proprietary information excepted from disclosure under the Act. Accordingly, you state that you have notified Barnes & Noble, the interested third party, of the request and of the company's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *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 to disclosure in certain circumstances). We have received correspondence from an attorney for Barnes & Noble. We have considered the submitted arguments and the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Barnes & Noble states that a portion of the submitted information is subject to a previous ruling issued by this office on November 21, 2006. *See* Open Records Letter No. 2006-13810 (2006). You do not inform us that the pertinent facts and circumstances have changed since the issuance of that prior ruling. Thus, we determine that the university may continue to rely on our ruling in Open Records Letter No. 2006-13810 as a previous determination and withhold the information that was subject to our prior ruling in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

We next address Barnes & Noble's claim for exception from disclosure of the submitted information that was not addressed in our prior ruling. Barnes & Noble objects to the release of its Detailed Sales Report based on section 552.110 of the Government Code. Section 552.110(b) protects the proprietary interests of third parties by excepting from disclosure 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(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 National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999). Upon review of Barnes & Noble's argument and the submitted information, we conclude that Barnes & Noble has made a specific factual or evidentiary showing that release of the Detailed Sales Report would cause it substantial competitive harm. Therefore, the university must withhold the information that is not encompassed by our prior ruling pursuant to section 552.110(b) of the Government Code.

In summary, the university may continue to rely on our ruling in Open Records Letter No. 2006-13810 as a previous determination and withhold the information that was subject to our prior ruling in accordance with that decision. The university must withhold the information that is not encompassed by our prior ruling pursuant to section 552.110(b) of the Government Code.

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 at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 333837

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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