



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 28, 2009

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

OR2009-01099

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# 333395.

Texas A & M University (the "university") received a request for "by month, the written accounting of sales, by location and department, as reported to [the university] by Barnes and Noble College Booksellers, Inc. ["Barnes & Noble"] from August 2004" to the date of the request. The university takes no position on whether the requested information is excepted from disclosure, but you state that release of this information may implicate the proprietary interests of Barnes & Noble. Accordingly, you inform us that you notified Barnes & Noble of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (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 to disclosure in certain circumstances). Barnes & Noble has submitted arguments against the disclosure of the requested information. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note that a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-13345 (2006). With regard to the requested information that is identical to the

information previously requested and ruled upon by this office in the prior ruling, we conclude that, as we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the university must continue to rely upon Open Records Letter No. 2006-13345 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances, on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information is not encompassed by the previous ruling, we will address Barnes & Noble's arguments against disclosure.

Section 552.110 of the Government Code protects the proprietary interests of third parties by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) 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(a), (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* Open Records Decision No. 661 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

Although Barnes & Noble has submitted arguments asserting that its "annual Detailed Sales Report," entitled the "Sales & and Other Income Data Sheet," is excepted from disclosure under section 552.110(b), Barnes & Noble has not submitted any arguments against disclosure for the submitted information, which consists of Annual Commission Statements and Monthly Sales Reports.<sup>1</sup> Because Barnes & Noble has not submitted any arguments against disclosure for the submitted Annual Commission Statements and Monthly Sales Reports, we find that Barnes & Noble has failed to make the specific factual and evidentiary showing required by section 552.110(b) that release of the information at issue would cause the company substantial competitive harm. *See* ORD 661 at 5-6 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the university may not withhold any

---

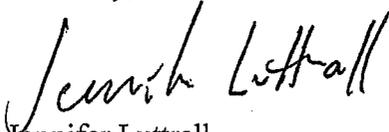
<sup>1</sup>We note that the university did not submit the referenced "annual Detailed Sales Report" or "Sales & and Other Income Data Sheet." This ruling does not address information that was not submitted by the university and is limited to the information submitted as responsive by the university. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

of the submitted information under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been raised, 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 333395

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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