



September 6, 2000

Ms. Deena J. Wallace
Associate General Counsel
The Texas A & M University System
301 Tarrow
John B. Connally Building, 6th Floor
College Station, Texas 77840-7896

OR2000-3447

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138663.

The Texas A & M University System (the "system") received a written request for, among other things, the following information:

all documents (of any nature, proprietary or otherwise) in whatever form (electronic or otherwise) which were supplied to you or anyone representing you or any member of, or administrator to, the Assessment Committee, the Inquiry Committee, or any other body which has reviewed my October 29, 1999 charges of Misconduct Against Drs. Harland Prechel and John Boies.

You contend that the requested information, to the extent that it consists of the proprietary information of the named university professors, is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code.¹ We have considered the exception you raised and reviewed the submitted representative sample of the information.²

¹You state that the system has released or will make available to the requestor some of the other requested information and has sought clarification with regard to other requests received from the requestor. We additionally note that although you have also requested a decision from this office pursuant to section 552.305 of the Government Code as to whether the release of the information at issue would affect the proprietary interests of certain third parties, we need not reach that issue here because we resolve your request under section 51.914 of the Education Code.

²In reaching our conclusion here, we 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 No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 51.914 of the Education Code provides in pertinent part:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 552, Government Code, or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and *all* technological and *scientific information* (including computer programs) *developed in whole or in part at a state institution of higher education*, regardless of whether patentable or capable of being registered under copyright or trademark laws, *that have a potential for being sold, traded, or licensed for a fee[.]* [Emphasis added.]

The purpose of section 51.914(1) is to protect the “actual or potential value” of technological and scientific information developed in whole or in part at a state institution of higher education. *See* Open Records Decision No. 497 at 6 (1988) (interpreting former Education Code section 51.911). You contend the information at issue is confidential under section 51.914 of the Education Code because the information “is clearly scientific research developed in whole or in part at an institution of higher education, and the research being requested has the potential for being sold, traded, or licensed for a fee.” Whether particular scientific information has such a potential is a question of fact that this office is unable to resolve in the opinion process. *See* Open Records Decision No. 651 (1997). Thus, this office has stated that in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a university’s assertion that the information has this potential. *See id.* Based on your representations to this office, we conclude that you have demonstrated that the information at issue is made confidential under section 51.914 of the Education Code. Accordingly, the system must withhold the information at issue pursuant to section 552.101 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

requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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).

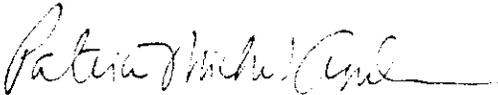
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 the General Services Commission 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/RWP/ljp

Ref: ID# 138663

Encl. Submitted documents

cc: Dr. Mary Zey
c/o Mr. James C. Ferrell
Archer & Ferrell, L.L.P.
2929 Allen Parkway
Houston, Texas 77019
(w/o enclosures)