



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 19, 2003

Ms. Carol Longoria  
Public Information Coordinator  
University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2003-1110

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176716.

The University of Texas Southwestern Medical Center (the "university") received a request for 1) protocol relating to animal use submitted to or approved by the university during a specified period, 2) certain proof of purchase agreements, and 3) minutes of a specified committee held during a certain period. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the representative samples of submitted information.<sup>1</sup>

You argue that information submitted at Tab 5 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code.<sup>2</sup> Section 51.914 of the Education Code provides in pertinent part:

---

<sup>1</sup>We assume that the "representative samples" of records submitted to this office are 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.

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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[.]

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is the proprietary information of a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties[.]

Educ. Code § 51.914(1), (2). 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 statutory predecessor to section 51.914). 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.*

You represent that disclosure of the “protocols, details of procedures, raw data, reports, and other information . . . would directly reveal the substance of the research and permit third parties to appropriate such research.” You further state that

The type of information reflected in the protocols and related [Institutional Animal Care and Use Committee (“IACUC”)] correspondence does have the potential for being sold, traded, or licensed for a fee. Research discoveries and inventions are a product of the data collected and developed by the researchers. In addition to conducting its own research, all animal data can

potentially be sold or licensed for a fee to other researchers, or third parties interested in such animal-related records.

Based on our review of your arguments and the information at Tab 5, we conclude that this information is confidential in its entirety under section 51.914 of the Education Code. Accordingly, the university must withhold from the requestor the information at Tab 5 under section 552.101 of the Government Code. As we are able to make this determination, we need not address your arguments under section 552.104 for this information.

We next address your arguments for withholding the information at Tab 6. You argue that this information is made confidential under section 161.032 of the Health and Safety Code and is therefore excepted from disclosure under section 552.101. Section 161.032 of the Health and Safety Code provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. . . . Records, information, or reports of a medical committee . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital . . . are not subject to disclosure under Chapter 552, Government Code.

....

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital . . . .

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a hospital [or] a medical organization . . . .” Health & Safety Code § 161.031(a). The term “‘medical committee’” also includes “‘a committee, including a joint committee, of one or more of the entities listed in Subsection (a).” *Id.* § 161.031(c). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services . . . .” Health & Safety Code § 161.0315(a).

You state that the information at Tab 6 comprises records and proceedings of the university’s IACUC. Based on your arguments and our review of the information at Tab 6, we find that the IACUC is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(a). Therefore, the submitted information at Tab 6 is confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See Jordan v. Court of Appeals*, 701 S.W.2d 644, 648 (Tex. 1985) (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product).

We turn now to your argument that information at Tab 7 revealing the animals' locations is excepted from disclosure under section 552.108(b)(1). Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). We note, however, that section 552.108(b)(1) applies *only* to internal records and notations of law enforcement agencies or prosecutors. See Gov't Code § 552.108(b)(1); Open Records Decision No. 434 (1986). The information at Tab 7 consists of "Animal Purchase Requisition" forms, purchase orders relating to the animals' receipt, and accounts payable documents. You do not indicate, nor do the records indicate on their face, that the Animal Purchase Requisition forms, purchase orders, and accounts payable documents are the internal records and notations of law enforcement agencies or prosecutors.

However, this office has recognized that information that is not in the hands of a law enforcement agency or prosecutor may be excepted under section 552.108 in some circumstances. Specifically, we have held that information held by a non-law enforcement agency may be withheld under section 552.108 if the information relates to a pending criminal investigation by a law enforcement agency. See Open Records Decision Nos. 474 (1987), 372 (1983), 183 (1978) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information that relates to incident). Similarly, this office has determined that records from the administrative investigation of a non-law enforcement agency may be withheld under section 552.108 if the records reveal possible criminal conduct that the non-law enforcement agency intends to report or has reported to the appropriate law enforcement agency or prosecutor. Attorney General Opinion MW-575 (1982); Open Records Decision No. 493 (1988). You have submitted a letter from the university's Chief of Police wherein the Police Chief asserts that he is "concerned that disclosure of documents that identify the location, and other information, of animals on the UT Southwestern campus may put our police officers, these animals, and the individuals who work with these animals, in physical jeopardy." However, you do not contend, nor does it appear, that the submitted Animal Purchase Requisition forms, purchase orders, and accounts payable documents relate to a pending criminal investigation by the university's police department. Nor do you indicate that this information is information from an administrative investigation that reveals possible criminal conduct and therefore will be forwarded to the police department.

Because you have not met your burden in demonstrating that the highlighted information at Tab 7 is an internal record or notation of a law enforcement agency, relates to a pending criminal investigation by the university's police department, or is from an administrative investigation that reveals possible criminal conduct and therefore will be forwarded to the police department, we find that the information may not be withheld under section 552.108(b)(1) and must be released.

In summary, the university must withhold from the requestor all of the information at Tab 5 pursuant to section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. The information at Tab 6 must be withheld under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. The remaining information must be released to the requestor.

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).

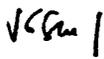
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 176716

Enc: Submitted documents

c: Ms. Karen Long  
1209 Wagonwheel Road  
Garland, Texas 75040  
(w/o enclosures)