



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2004

Ms. Carol Longoria  
U.T. System Administrator  
University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2981

OR2004-7509

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# 208328.

The University of Texas Health Science Center at San Antonio (the “university”) received a request for all minutes of all of the university’s Institutional Biosafety Committee (“IBC”) meetings from January 1, 2002 through the present. You state that the university will release the majority of the responsive information. You seek, however, to withhold portions of the submitted minutes from disclosure under section 522.101 of the Government Code. We have considered your claimed exception to disclosure and have reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov’t Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).

Initially, you acknowledge, and we agree, that the university did not fully comply with the requirements of section 552.301 of the Government Code in seeking this open records decision. Specifically, the university failed to seek a ruling from this office and state its claimed exceptions to disclosure within ten business days of receiving this written request. *See* Gov’t Code § 552.301(a), (b). The university’s delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, the university must provide compelling reasons why the information should not

be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of section 552.101 provides such a compelling reason, we will address your arguments against disclosure.

Section 552.101 excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. You assert that all of the highlighted information is confidential under section 418.178 of the Government Code. As part of the Texas Homeland Security Act, section 418.178 was added to chapter 418 of the Government Code. Section 418.178 provides:

(a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Gov’t Code § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See generally* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See generally* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). After reviewing your arguments, we conclude that the university has failed to demonstrate how the highlighted information, which consists solely of the names of researchers, their departments, and the biosafety level of the toxin used in the research, is protected under section 418.178(b). Accordingly, the university must release all of the highlighted information.

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).

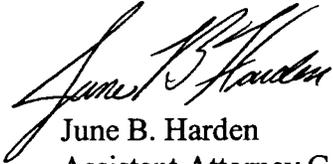
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 208328

Enc: Submitted documents

c: Mr. Edward Hammond  
The Sunshine Project  
101 West 6<sup>th</sup> Street, Suite 607  
Austin, Texas 78701  
(w/o enclosures)