



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2004

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2004-10030

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# 213595.

The University of Texas M.D. Anderson Cancer Center (the "university") received three requests from the same requestor for the following information:

[A]ll active protocols involving primates and all primate necroscopy reports for the last 2 years, including all protocols and necroscopy reports on the chimpanzees that are a part of the National Center for Research Resources program, those involved in the National Chimpanzee Breeding and Research Program under the grant number 3U42RR003589-14S1 and those housed in the Extramural Research Facilities. We also request all health care records for chimpanzees.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You also indicate that release of the requested information may implicate the proprietary interests of third parties, and you have therefore notified interested third parties of the request and of their right to submit arguments to this office as to why the 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 under Public

Information Act in certain circumstances). We have reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the information at issue is confidential pursuant to section 51.914 of the Education Code, which 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[.]

(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

¹ 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 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.

stated that in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a governmental body’s representation that the information has this potential. *See id.*

In this case, you represent that the information at issue directly reveals the substance of the M.D. Anderson Cancer Center’s primate research, and you contend that release of the information would facilitate appropriation of this research by third parties. You further advise that the information reveals research, products, devices, and procedures that have the potential to be sold, traded, or licensed for a fee to other researchers or institutions, or private entities. Based on your representations and our review, we agree that the majority of the submitted information reveals the substance of the research at issue and is therefore confidential under section 51.914 of the Education Code and excepted under section 552.101.² We note, however, that a portion of the submitted information does not reveal the substance of the research at issue. We find that this information, which we have marked, is not confidential under section 51.914 and may not be withheld under section 552.101 on that basis. *See* Open Records Decision Nos. 557 (1990) (stating that working titles of experiments are not *per se* protected by section 51.914 because release would not permit person to appropriate research nor does information directly reveal substance of proposed research); 497 (1988) (stating that information related to research is not protected if it does not reveal details about research).

We note that the portion of the submitted information that is not confidential under section 51.914 of the Education Code contains information identifying researchers. You seek to withhold this information pursuant to section 552.101 in conjunction with the doctrine of common-law privacy. Section 552.101 encompasses common-law privacy, which ordinarily protects information only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). However, information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* In this instance, we find the information you have provided is insufficient to demonstrate the existence of special circumstances. You have not shown that release of the identifying information of the individuals whose names appear in the information at issue would subject these individuals to an imminent risk of harm. Therefore, we determine that such information is not excepted from disclosure and must be released.

² As we are able to make this determination, we do not reach your remaining arguments against disclosure for this information, or comments submitted by interested third parties.

In summary, with the exception of the information we have marked, the submitted documents are confidential pursuant to section 51.914 of the Education Code and must be withheld under section 552.101 of the Government Code. The information we have marked in the submitted documents is not excepted from disclosure and 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 213595

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