



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2007

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

OR2007-09189

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# 283075.

The Texas A&M University (the "university") received a request for information relating to a specified visit by the Centers for Disease Control. You claim that some of the requested information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code exempts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as section 418.178 of the Government Code. Section 418.178 provides as follows:

(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:

¹We 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.

(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(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.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* 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 claiming section 418.178 of the Government Code must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You claim that a portion of the submitted information is confidential under section 418.178(b)(2). Although you state that the information you have marked specifically identifies buildings and room numbers where chemicals, biological agents, and toxins are stored, you have provided no arguments explaining that these materials could be used to build or assemble a weapon of any kind. However, you also state that this same information reveals the location of unpublished research data relating to potential vaccines for certain biological agents and toxins. Accordingly, we generally conclude that some of the information you have marked reveals the location of unpublished vaccine data and is therefore confidential under section 418.178 of the Government Code. We have marked for release information that does not reveal the location of unpublished vaccine data, but rather describes a type of facility and the purpose behind entry into a laboratory. The university has not explained how section 418.178 applies to this information. Therefore, the university must withhold the information you have marked, except as we have marked for release, under section 418.178 of the Government Code in conjunction with section 552.101 of the Government Code. The remaining submitted 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).

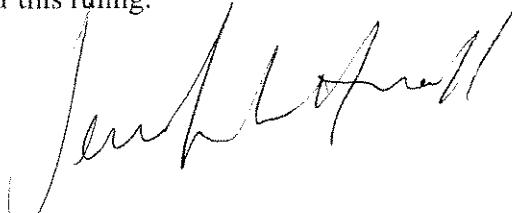
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Jennifer L. Luttrall
Assistant Attorney General
Open Records Division

JLU/eeg

Ref: ID# 283075

Enc. Submitted documents

c: Mr. Edward Hammond
The Sunshine Project
1920 Stuart Street
Berkeley, California 94703
(w/o enclosures)