



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2009

Ms. Katherine R. Fite
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2009-03477

Dear Ms. Fite:

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# 340688.

The Office of the Governor (the "governor") received a request for information relating to funding of academic programs and faculty research at the University of Texas at San Antonio ("UTSA") and UTSA's employment of a named professor. You state that some of the requested information is being released. You generally claim that the submitted information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code, including sections 552.101, 552.104, 552.110, and 552.131. You also notified UTSA of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ The University of Texas System (the "system") has submitted arguments on behalf of UTSA. We have considered all of the submitted arguments and reviewed the submitted information.

The system contends that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law,

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 51.914 provides in part:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under [the Act], 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; [or]

(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). As noted in Open Records Decision No. 651 (1997), the legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” Furthermore, 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 id.* 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.*; *but see id.* at 10 (university’s determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review). We note that section 51.194 is not applicable to working titles of experiments or other information that does not reveal the details of the research. *See* Open Records Decision Nos. 557 at 3 (1990), 497 at 6-7 (1988). Moreover, section 51.914 is applicable only to information “developed in whole or in part at a state institution of higher education.” Educ. Code § 51.914(1).

The system informs us that the submitted information involves control and wireless communication protocols. The system states that the information was developed by UTSA

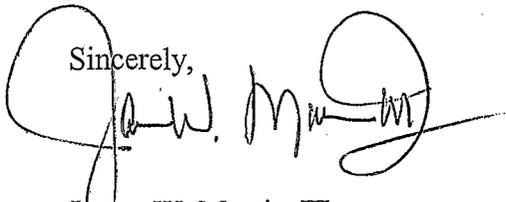
researchers and has the potential for being sold, traded, or licensed for a fee. The system contends that disclosure of the information would directly reveal the substance of the research and permit third parties to appropriate it. Based on the system's representations, we conclude that the submitted information is confidential under section 51.914(1) of the Education Code.

We note that UTSA transferred the submitted information to the governor. This office has long held that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies, so as to effectively carry out the business of the state. *See* Attorney General Opinions GA-0055 (2003), H-836 (1976), H-242 (1974), M-713 (1970); *see also* Open Records Decision Nos. 674 (2001), 667 (2000), 661 (1999). *But see* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities); *see also* Open Records Decision No. 655 (1997); *cf.* Attorney General Opinion GA-0019 (2003) (information could not be transferred where statute absolutely prohibited disclosure). Therefore, the submitted information remains confidential in the governor's possession under section 51.914 of the Education Code and must be withheld from disclosure on that basis under section 552.101 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 340688

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902
(w/o enclosures)

Mr. John Danner
Office of Legal Affairs
The University of Texas at San Antonio
One UTSA Circle
San Antonio, Texas 78249
(w/o enclosures)