



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2009

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-06083

Dear Ms. Chatterjee:

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# 342101.

The University of Texas Medical Branch at Galveston (the "university") received a request for records related to a specified university employee's service on the Institute of Medicine's Committee on Assessment of Future Scientific Needs for Live Variola Virus. You claim that the submitted information is not subject to the Act or, alternatively, is excepted from disclosure under sections 552.111 and 552.137 of the Government Code. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Dr. Ann Arvin and the National Academy of Sciences (the "academy") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).* We have considered your arguments and reviewed the submitted information. We have also considered arguments submitted by the academy and comments submitted by the requestor.

See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.021 of the Government Code provides for public access to "public information," *see id.* § 552.021, which is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988).

The submitted information consists of communications between a university employee and the Institute of Medicine (the "IOM"), a private organization. You state that the university is not a member of the IOM and that the involved employee's membership in the IOM is "based on his specific expertise and accomplishments" and "not based on his employment with [the university]." You further state that the information at issue consists of personal correspondence by the university's employee that was not collected, assembled, or maintained in connection with the transaction of any official business of the university. You inform this office that the university neither owns nor has official access to this information. After reviewing your arguments and the information at issue, we agree that this information does not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. *See* Gov't Code § 552.021; *see also* ORD 635 (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). Therefore, we conclude that the submitted information is not subject to the Act and need not be released in response to this request.¹

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

¹As this ruling is dispositive, we need not address the exceptions against disclosure raised by you and the academy.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/cc

Ref: ID# 342101

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Becky Wilson
The University of Texas Medical Branch
Office of Legal Affairs
301 University Boulevard
Galveston, Texas 77555-0171
(w/o enclosures)

Dr. Ann Arvin MD
Chairman of Committee on Assessment of
Future Scientific Needs for Live Variola Virus
Lucile Packard Professor of Pediatrics and Microbiology
300 Pasteur Drive, G-311
Stanford, California 94305
(w/o enclosures)

Deepali Patel
Program Officer
Institute of Medicine
The National Academies
500 Fifth Street Northwest
Washington, DC 20001
(w/o enclosures)