



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2010

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

OR2010-01992

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# 369797.

The University of Texas System (the "system") received a request for information related to the University of Texas at San Antonio (the "university") or the system carrying out an intelligence or psychological program called Operation Dark Screen or Texas Dark Screen Cybersecurity Exercises. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Section 51.914 of the Education Code provides in relevant 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:

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- (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;

...

(3) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility that is jointly financed by the federal government and a local government or state agency, including an institution of higher education, if the facility is designed and built for the purposes of promoting scientific research and development and increasing the economic development and diversification of this state.

Educ. Code § 51.914(1), (3). The legislature is silent as to how this office or a court is to determine whether particular information has “a potential for being sold, traded, or licensed for a fee.” *See* Open Records Decision No. 651 (1997). Furthermore, whether particular 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(1) 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(1) is applicable only to information “developed in whole or in part at a state institution of higher education.” Educ. Code § 51.914(1).

You inform us that the information you have marked under section 51.914(1) includes requests for funding for the Center for Information Assurance and Security (“CIAS”), which is led by university faculty. You assert that the submitted information includes novel and emerging ideas of university researchers, which constitute intellectual property developed by the university that has the potential for being sold, traded, or licensed for a fee. You contend that disclosure of this information would directly reveal the substance of CIAS’ initiatives and permit third parties to appropriate such processes and plans. Based on your representations and our review, we conclude that the information we have marked is confidential under section 51.914. Thus, the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. However, you have not established that any of the remaining information reveals the substance of the project at issue. *See* Open Records Decision No. 497 (1988) (stating that information related to research is not protected if it does not reveal details about research). Further, a portion of the remaining information is publicly available online. Thus, we find none of the remaining information is confidential under section 51.914.

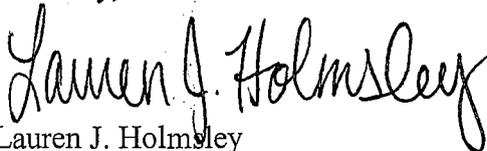
The remaining information contains e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail addresses you have marked do not appear to be of a type specifically excluded by section 552.137(c). You inform us that no member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the system must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.¹

In summary, the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. The system also must withhold the information you have marked under section 552.137 of the Government Code. The remaining information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 369797

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)