



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Ms. Ann Bright  
General Counsel  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2010-07676

Dear Ms. Bright:

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# 380824.

The Texas Parks and Wildlife Department (the "department") received requests for the following information related to the department's dove lethality study: 1) the manufacturer, shell size, shot size, and pellet type used in the study, load specifics for the different shells used in the study, and how many of each load was shot; and 2) contracts signed with Cooperative North American Shotgunning Education Program ("CONSEP") and Texas State University (the "university") regarding the dove lethality study, as well as a lead ingestion study, and studies related to these research projects. You state the department is releasing agreement number 174785 between the department and the university and amendments 1 through 4; agreement number 196117 between the department and the university and amendment 1; agreement number 174910 between the department and the South Dakota Game, Fish, and Parks Department ("SDGFPD"); a redacted version of amendment 1 to agreement number 175872 between the department and SDGFPD; and a redacted version of the "Scope of Work" dated April 25, 2007.<sup>1</sup> You claim marked portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>You state SDGFPD subcontracted with CONSEP to assist with the study.

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 51.914 of the Education Code, which provides in pertinent part as follows:

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[.]

Educ. Code § 51.914(1). As noted in Open Records Decision No. 651, 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." Open Records Decision No. 651 at 9 (1997). Furthermore, whether particular scientific information has such a potential is a question of fact 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 the information has this potential. *See id.* *But see id.* at 9 (university's determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review). The purpose of section 51.914(1) is to protect the "actual or potential value" of 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). Information that does not reveal the details of the research or allow a person to appropriate the research efforts of the state institution of higher education is not protected under section 51.914. *See* Open Records Decision Nos. 557 at 3 (1990), 497 at 6-7.

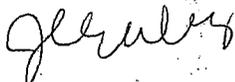
You seek to withhold marked portions of the submitted information under section 51.914. You explain the submitted information pertains to a dove lethality study developed by interagency agreement between the department and the university to determine the lethality of various types of shot. You explain the research is ongoing. You assert, and provide a letter from the university's primary researcher stating, the information at issue has the potential for being sold, traded, or licensed for a fee to manufacturers, distributors, and sellers of shot for commercial purposes. We agree most of the information you marked sets forth the details of the ongoing research and may be withheld under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. You have not explained, however, nor can we discern, how the remaining information you marked, which

consists of non-specific information regarding a change to the project and a summary of materials, labor, and costs associated with the change to the project, reveals details about the research. *See id.* Accordingly, the department may not withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. As you raise no further exceptions to disclosure, 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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 380824

Enc. Submitted documents

c: Requestor  
(w/o enclosures)