



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Mr. R. Brooks Moore
Assistant General Counsel
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2010-15466

Dear Mr. Moore:

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# 396882.

The Texas Engineering Extension Service ("TEEX") received a request for a training manual related to a specified course taught by TEEX. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered arguments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we address the requestor's comments to this office arguing that TEEX failed to comply with section 552.301(b) of the Government Code by not seeking a ruling from this office within ten business days of receiving his written request. *See id.* § 552.301(b). The requestor states he made previous requests for the information at issue on June 3, 2010, and June 18, 2010, through e-mail. TEEX contends the requestor did not request specific information in writing until July 26, 2010. TEEX states the request was made via e-mail and was forwarded to TEEX's designated public information officer on that date. While no specific language is required by the Act, a request made under the Act must sufficiently identify the information requested. *Open Records Decision No. 23 (1974)*. Further, a written request made through e-mail must be sent to the governmental body's officer for public information, or the officer's designee, in order to trigger the deadlines provided by

the Act. *See* Gov't Code § 552.301(c). Based upon our review of the submitted documents, we conclude the requestor's original e-mail communications were not valid requests pursuant to section 552.301(c), and TEEEX did not violate the procedural requirements of section 552.301 by not treating these communications as requests for information under the Act.

The requestor next asserts TEEEX failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code by not including a copy of Exhibit A along with the copy of TEEEX's brief sent to him. Exhibit A consists of the e-mail communications between the requestor and TEEEX. Section 552.301(e-1) states a "governmental body that submits written comments to the attorney general . . . shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request." *Id.* § 552.301(e-1). We find the requestor's receipt of TEEEX's August 9, 2010 brief, which provides the substance of TEEEX's arguments under sections 552.101 and 552.104, satisfies the statutory requirement under section 552.301(e-1). Thus, TEEEX did not fail to comply with the procedural requirements set out in section 552.301(e-1).

The requestor also asserts the information at issue has previously been provided to the public and, therefore, must be provided to any person who requests it. Section 552.007 of the Government Code generally prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See id.* § 552.007. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See id.*; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision Nos. 490 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). In this instance, TEEEX raises section 552.101 of the Government Code, which governs information considered to be confidential by law. *See* Gov't Code § 552.101. Thus, regardless of whether the information at issue has been previously released, we must address whether the submitted information is made confidential by law and must now be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 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 section 51.914 of the Education Code, which 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 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;

(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, 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).

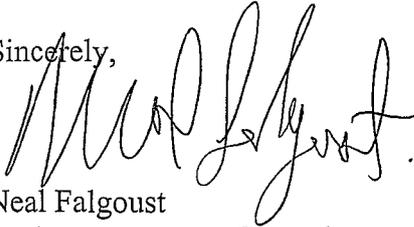
TEEX is part of Texas A&M University, a state institution of higher education. You state the submitted information is a course-related training manual that outlines a specific process developed by TEEX for the management of traffic-related emergencies. You also state this course is the only one of its kind in the country, and both the product and the process were developed through research conducted at TEEX. You state the course that incorporates this manual is offered by TEEX for a fee; therefore, the research and process developed have the potential for being sold, traded or licensed for a fee. Based upon these representations and our review, we conclude the submitted information is confidential under section 51.914 of the Education Code and must be withheld under section 552.101 of the Government Code.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.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 396882

Enc. Submitted documents

c: Requestor
(w/o enclosures)