



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 15, 2011

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

OR2011-03550

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# 411166 (TAMU 10-650, 11-093).

Texas A&M University (the "university") received a request for all raw data sets for the Texas School Surveys of Drug and Alcohol Use covering years 1988 through 2010 and subsequently received another request for the same raw data sets and their corresponding reports. You claim the submitted information is 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.¹ We have also received and considered comments from the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You argue the

¹We assume the "representative sample" of information 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 those submitted to this office.

raw data sets are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.914(1) of the Education Code. Section 51.914 of the Education Code 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 [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[.]

Educ. Code § 51.914(1). The purpose of section 51.914(1) is to protect the “actual or potential value” of technological and 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). 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.” *See* Open Records Decision No. 651 (1997). 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 (stating university’s determination that information has potential for being sold, traded, or licensed for a fee is subject to judicial review).

You state some of the requested raw data sets were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2008-10055 (2008). In this decision, we ruled the university must withhold the raw data sets for the years 2000, 2002, 2004, and 2006 under section 552.101 of the Government Code in conjunction with section 51.914(1) of the Education Code because release of this information would potentially diminish its value to the university for use in acquiring research funding. For the present request, you again contend the raw data sets are confidential under section 51.914(1). The university explains the Texas Department of State Health Services (“DSHS”) commissioned the survey and contracted with the university to collect these raw data sets. The university argues release of the information would potentially diminish its value to the university for use in acquiring continued DSHS research funding. We note, however, section 51.914 of the Education Code protects information that the university can potentially sell, trade, or license for a fee. The potential that the university may not obtain further research funding is not a potential or actual value contemplated by section 51.914.

See Educ. Code § 51.914(1). Therefore, upon further consideration, we find the university has failed to demonstrate how the raw data sets have actual or potential value to the university pursuant to section 51.914 of the Education Code. As such, the university may not withhold any of the raw data sets on that basis. As you raise no further exceptions to disclosure for the requested information, the university must release it to the requestors.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 411166

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)