



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2011

Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2011-08374

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# 420365 (OGC# 136581 and UTSA File No. W001060-32411).

The University of Texas at San Antonio (the "university") received a request for 1) e-mails sent or received by two named administrators that include the names of nine named individuals or two specified e-mail addresses during a specified time period; 2) e-mails between the two named administrators pertaining to the Texas Emerging Technology Fund; and 3) billing records for the office and cellular telephones assigned to the two named administrators during a specified time period. You state the university is releasing information responsive to item three of the request. In addition, you state the university will redact e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the requested information is not subject to the Act. Additionally, you claim some of the submitted information is excepted

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<sup>1</sup>Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

from disclosure under section 552.101 of the Government Code. You also state release of some of the requested information may implicate the proprietary interests of Mayan Pigments, NanoTailor, The Texas A&M University System, The University of Texas System, Coremedics Corp., Agile Planet, Medical Safety Technologies, Tactical Information Systems, LLC, and the Office of the Governor. Thus, pursuant to section 552.305 of the Government Code, you notified these third parties of the request and of their right to submit arguments to this office as to why the information at issue should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

You argue some of the requested information is not subject to the Act. Section 552.021 of the Government Code provides for public access to "public information," 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." *See* Gov't Code § 552.002(a), .021. 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).

You assert the information you have marked consists of information relating to the participation of the two named administrators in the Texas Emerging Technology Fund Advisory Committee (the "committee"). You state the information at issue "was not prepared by or for the [u]niversity; rather, this information was prepared solely by or for the [committee]." You further state the communications at issue were not collected, assembled, or maintained in connection with the transaction of any official business of the university. After reviewing the submitted arguments and the information at issue, we agree the information you have marked 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 id.* § 552.021; *see also* Open Records Decision No. 635 (1995) (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 the marked information is not subject to the Act and need not be released in response to the request.

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. This exception encompasses information other statutes make confidential, including section 51.914 of the Education Code, which provides in 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:

(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 we noted in Open Records Decision No. 651 (1997), 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." 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 (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 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).

You have marked information the university contends is confidential under section 51.914. You explain the marked information consists of drafts of research and research articles authored and/or co-authored by university employees, and correspondence relating to those documents. You state this information documents proposed and unpublished research authored or co-authored by university employees and contains scientific and other information relating to a product, device, or process (or the application of such) developed by university researchers. You represent to this office the information in question has the potential for being sold, traded, or licensed for a fee. You state release of this information would directly reveal the substance of the research and enable third parties to appropriate it. Accordingly, the university must withhold the information we have marked under section 552.101 in conjunction with section 51.914 of the Education Code. You have not explained, however, nor can we discern, how the remaining information at issue, which consists of general background facts and objectives, published articles, and general descriptions of the research, reveals details about the research. Consequently, we determine you have failed to establish this information falls within the scope of section 51.914(1). Therefore, the university may not withhold any of the remaining information under section 552.101 in conjunction with section 51.914.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why any portion of their information should not be released. Therefore, we have no basis to conclude any of the third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Consequently, the university may not withhold any of the submitted information on the basis of any proprietary interest the third parties may have in the information.

In summary, the e-mails you have marked pursuant to section 552.002 are not subject to the Act and need not be released in response to this request. The university must withhold the information we have marked under section 552.101 in conjunction with section 51.914 of the Education Code. The remaining information must be released to the requestor.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 420365

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Aaron Fuller  
Legal Coordinator  
The University of Texas at San Antonio  
One UTSA Circle  
San Antonio, Texas 78249  
(w/o enclosures)

Ms. Lori Niewald  
President & CEO  
Mayan Pigments  
Burgess Hall 320  
500 West University Avenue  
El Paso, Texas 79968  
(w/o enclosures)

Mr. Ramon Perales  
President  
NanoTailor  
700 Lavaca, Suite 1400  
Austin, Texas 78701  
(w/o enclosures)

Ms. Theresa W. Fossum  
Texas A & M University  
Michael E. DeBaakey Institute  
Department of Biomedical Engineering  
337 Zachry Engineering Center  
College Station, Texas 77843  
(w/o enclosures)

Dr. Brett Giroir  
Vice Chancellor of Research  
Texas A&M University System  
Institute for Regenerative Medicine  
800 Raymond Stotzer, Suite 2020  
College Station, Texas 77843  
(w/o enclosures)

Mr. Philip Aldridge  
Vice Chancellor for Finance & Business Development  
University of Texas System  
HSC Children's Regenerative Medicine  
Ashbel Smith Hall, Room 418  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)

Mr. James Meador  
CEO  
Coremedics Corp.  
709 Country Lane  
Houston, Texas 77024  
(w/o enclosures)

Mr. Cheetan Capoor  
President  
Agile Planet  
3925 West Braker Lane, ATI 3<sup>rd</sup> Floor  
Austin, Texas 78759  
(w/o enclosures)

Ms. Robin Martin  
Medical Safety Technologies  
c/o Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701  
(w/o enclosures)

Ms. Mary Haskett  
President  
Tactical Information Systems, L.L.C.  
3616 Far West Boulevard #117-258  
Austin, Texas 78731  
(w/o enclosures)

Mr. Justin Gordon  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711  
(w/o enclosures)