



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2011

Ms. Zeena Angadicheril  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2011-13799

Dear Ms. Angadicheril:

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# 430835 (U.T. OGC # 138392).

The University of Texas M. D. Anderson Cancer Center (the "center") received a request for the "gross necropsy reports, necropsy worksheets, and/or other diagnostic pathology reports on all government owned or supported chimpanzees who died" at the center for a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-12510 (2011). There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, we conclude the center must continue to rely on this ruling as a previous determination and withhold the previously ruled upon information in accordance with the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the information at issue was not responsive to the previous request for information and is not encompassed by the ruling, we will consider your remaining arguments.

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 section encompasses information protected by other statutes, such as section 51.914 of the Education Code, which provides, in pertinent part:

In order to protect the actual or potential value, the following information is confidential and is not 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; [or]

(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[.]

Act of May 29, 2011, 82nd Leg., R.S., S.B. 5, § 6.04 (to be codified as an amendment to Educ. Code § 51.914(a)). As 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.” Open Records Decision No. 651 at 9 (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 governmental body’s assertion that the information has this potential. *See id. But see id.* at 10 (stating that university’s determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review). We note that section 51.914 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).

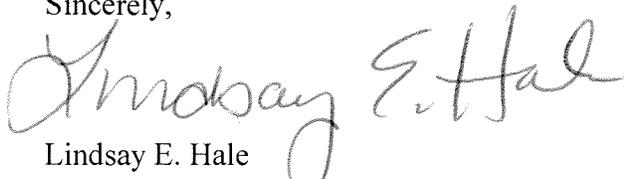
You state that the information at issue reflects the “unique devices and procedures through which chimpanzees, on a voluntary basis, allow attendants to draw blood, collect samples, and conduct physical examinations.” You also state that the information at issue contains primate medical records that are used to track the success or lack thereof of various clinical interventions and, as such, contain valuable scientific information. You state that this information has the potential for being sold, traded, or licensed for a fee. Based on your representations and our review, we agree that the information at issue is confidential under section 51.914 of the Education Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

In summary, the center must continue to rely on Open Records Letter No. 2011-12510 as a previous determination and withhold the previously ruled upon information in accordance with the prior ruling. The center must withhold the remaining requested information under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bs

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 430835

Enc. Submitted documents

c: Requestor  
(w/o enclosures)