



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Ms. Laura Russell
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR2011-15003

Dear Ms. Russell:

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# 433303.

The Texas Parks and Wildlife Department (the "department") received a request for all information related to (1) "[t]he ingestion of lead shot and/or bullet fragments by any mammals or birds" during a specified time and (2) "the effects or effectiveness of any type of ammunition . . . when used for the taking of any mammals or birds." You state you have released some responsive information to the requestor. You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-07676 (2010). In Open Records Letter No. 2010-07676, we concluded the department must withhold some of the information at issue under section 552.101 of the

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Code in conjunction with section 51.914 of the Education Code but must release the remaining information. We note section 51.914 of the Education Code was amended by the 82nd Legislature, thus the law on which the prior ruling was based has changed. *See* 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)). Therefore, as the relevant law has changed, the department may not rely on Open Records Letter Ruling No. 2010-07676 as a previous determination. *See* Open Records Decision No. 673 (2001) (describing the four criteria for a “previous determination”). Thus, we will consider the department’s arguments against disclosure of the submitted information.

Section 552.101 of the Government Code exempts 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[.]

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 seek to withhold 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 Texas State University (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. Upon review, we agree the submitted information reveals the details of the ongoing research and must be withheld 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, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 433303

Enc. Submitted documents

c: Requestor
(w/o enclosures)