



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2012

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2012-05647

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# 451183.

The Texas Transportation Institute, an agency of the Texas A&M University System (the "system") received a request for all materials related to training by the center for Alcohol and Drug Education Studies in relation to the Alcohol/Traffic Safety Expert Witness Project, including (1) all promotional and advertising materials; (2) all communication with persons teaching or attending any and all classes related to the project; (3) all documents related to funding and funding sources for the project; (4) all materials and curriculum used to teach and train persons participating in the project; (5) all logs and attendance records related to classes related to the project; (6) all testing and test results of every person attending any classes related to the project; (7) all documents related to the hiring, compensation, evaluation and termination of all teaching staff for the project; (8) any documents related to administration of the project; and (9) any videotapes or practice testimony. We understand you will release some of the requested information. You claim that 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

¹We assume the "representative sample" of records 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 that submitted to this office.

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:

(a) 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[.]

Educ. Code § 51.914(1). 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 government body’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).

You state the submitted information consists of the Alcohol/Traffic Safety Expert Witness Program, a training product developed by the system for the state of Texas, which is and will continue to be offered for a fee. You also state this training product could be utilized in any state by changing a topic in the current curriculum to include the laws of that given state and that the system is pursuing this possibility. Therefore, the information at issue has 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.

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,

A handwritten signature in cursive script that reads "Jeffrey W. Giles".

Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 451183

Enc. Submitted documents

c: Requestor
(w/o enclosures)