



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2012

Ms. Kristen Pauling Doyle  
General Counsel  
Cancer Prevention & Research Institute of Texas  
P.O. Box 12097  
Austin, Texas 78711

OR2012-17091

Dear Ms. Doyle:

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# 468913 (Ref. No. 2012-36).

The Cancer Prevention and Research Institute of Texas (the "institute") received a request for annual reports from all of the institute's commercialization grant recipients. You state some information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. In addition, you state release of the requested information may implicate the proprietary interests of Mirna Therapeutics, Inc. ("Mirna"). Accordingly, you provide documentation showing you have notified Mirna of the request and its right to submit arguments to this office. *See* 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 in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Mirna. Thus, Mirna has failed to demonstrate it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of

commercial or financial information, 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. Accordingly, the institute may not withhold the submitted information on the basis of any proprietary interest Mirna may have in the 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. Section 102.262 of the Health and Safety Code addresses the confidentiality of certain information pertaining to grants made by the institute. Section 102.262 provides:

(a) The following information is public information and may be disclosed under Chapter 552, Government Code:

- (1) the applicant’s name and address;
- (2) the amount of funding applied for;
- (3) the type of cancer to be addressed under the proposal; and
- (4) any other information designated by the institute with the consent of the grant applicant.

(b) In order to protect the actual or potential value of information submitted to the institute by an applicant for or recipient of an institute grant, the following information submitted by such applicant or recipient is confidential and is not subject to disclosure under Chapter 552, Government Code, or any other law:

- (1) all information, except as provided in Subsection (a), that is contained in a grant award contract between the institute and a grant recipient, 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 by an applicant for or recipient of an institute grant, regardless of whether patentable or capable of being registered under copyright or trademark laws, that has a potential for being sold, traded, or licensed for a fee; and

(2) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility.

Heath & Safety Code § 102.262. 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.” *Id.* § 102.262(b). 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* Open Records Decision No. 651 at 10 (1997). Thus, this office has stated that in considering whether requested scientific information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a party’s assertion that the information has this potential. *See id.* at 9-10 (construing Education Code section 51.914(1)). *But see id.* at 10 (finding determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review).

The submitted information consists of an annual report submitted to the institute pursuant to an awards contract. The submitted annual report describes the progress of the research the recipient has conducted and the project’s goals and timeline. You assert the information you have marked is confidential under section 102.262(b)(1). You inform us the information at issue addresses the technological and scientific information developed in whole or in part by the award recipient for the grant-funded project. Further, you state the information at issue relates to “the discovery and/or use of state-of-the-art technologies, tools, products, devices or processes for cancer research.” You inform us the information at issue is funded because the institute believes it to have “the potential for generating income for the state,” and it relates to “a product and/or process [that] is expected to be sold or licensed for a fee.” The institute argues premature disclosure of this information would directly reveal the substance of the research and could destroy valuable licensing and patent opportunities. Based upon these representations and our review, we find the information at issue relates to “a product, device, or process, the application or use of such a product, device, or process and . . . technological and scientific information, including computer programs . . . that has a potential for being sold, traded, or licensed for a fee” and is therefore generally subject to section 102.262. However, we note, pursuant to section 102.262(a), any information listed in section 102.262(a) is public information and may be disclosed. Health & Safety Code § 102.262(a). The institute states it publishes this information, as well as the title and a non-technical summary for each funded project, on its website. Therefore, with the exception of information that is subject to section 102.262(a), the institute must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 102.262(b) of the Health and Safety Code. As no other exceptions have been raised, the remaining information must be released.

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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 468913

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Ana Ward  
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Austin, Texas 78744  
(w/o enclosures)