



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2012

Ms. Carol Longoria  
Office of General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2012-18650

Dear Ms. Longoria:

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# 471661 (OGC# 146221).

The University of Texas at Austin (the "university") received a request for communications between certain individuals concerning a specified study and for communications regarding a request for the contract related to the study. You indicate the university has released information responsive to the second part of this request. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified the University of Virginia of the request and of its right to submit comments to this office. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 51.914 of the Education Code, which provides, in 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;

(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[.]

Educ. Code § 51.914(a)(1)–(2). 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. 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 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 the information has this potential. *See id.* *But see id.* at 10 (stating university’s determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review). We note 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 the submitted e-mail communications were exchanged between two researchers conducting work on a sociological study related to family structures. You state the researchers collaborated on the data collection and analysis that formed the basis of this study. You also explain this information has value because the data “can be used to validate the original survey instrumentation, create benchmarks, and provide theoretical and statistical support for ongoing and future research projects in the area of sociology.” Thus, you argue this information has the potential to be sold, traded, or licensed for a fee. Based on these representations and our review, we agree the submitted information consists of scientific information developed in part by the university. Thus, the university must withhold the submitted 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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 471661

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Dr. W. Bradford Wilcox  
Department of Sociology  
University of Virginia  
P.O. Box 400766  
Charlottesville, Virginia 22904-4766  
(w/o enclosures)