



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2012

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

OR2012-20421

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# 474321 (U.T. OGC# 146799).

The University of Texas at Austin (the "university") received a request for copies of all communications relating to a specified study that were made between a named university employee and either of two other named individuals during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the university notified the two named individuals of the request and of their right to submit arguments to this office explaining why their information should not be released.¹ See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information. We have also received comments from the requestor. *See id.*

Initially, you state a portion of the submitted information, which you have marked, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-18650 (2012). In Open Records Letter No. 2012-18650, this office

¹As of the date of this ruling, we have not received comments from either of the named individuals the university notified.

determined the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. However, since the issuance of Open Records Letter No. 2012-18650, this office has learned the university employee conducting the study at issue posted information on the university's website regarding the study. As such, we find that circumstances have changed and the university may not rely upon Open Records Letter No. 2012-18650 as a previous determination. *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 addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address the exception you have raised for all of the submitted information.

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 the following, in pertinent 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(a)(1). 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." ORD 651 at 9-10. 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.* at 10. 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.* However, a governmental body's determination that information has a potential for being sold, traded, or licensed for a fee is subject to judicial review. *See id.* 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 seek to withhold the submitted information under section 51.914(a)(1) of the Education Code. You state the submitted information contains the details of research, scientific data collection, and analysis that relates to a product, device, or process, or application of the same, developed by a university employee. You assert this information has the potential for being further sold, traded, or licensed for a fee and is therefore confidential pursuant to section 51.914(a)(1). As stated above, section 51.914(a)(1) protects information relating to a product, device, or process, and all technological and scientific information that has a potential for being sold, traded, or licensed for a fee to protect the actual or potential value of such information. As previously noted, the university employee conducting the study at issue posted information on the university's website regarding the study. The information provided on the university's website includes: the study design, the survey that was provided to each participant in the study, and the survey codebook revealing the data obtained from the survey. You seek to withhold information that is directly related to the information posted on the university's website under section 51.914(a)(1). Upon review, we conclude the university has not demonstrated how release of the submitted information would harm the actual or potential value of the information at issue. Accordingly, the university may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code.

We note the submitted information contains e-mail addresses of members of the public.² Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. Accordingly, the university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.³ As no further exceptions have been raised, the university must release the remaining information.

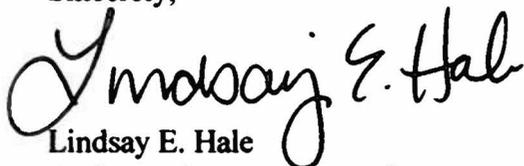
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 474321

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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