



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 2, 2013

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

OR2013-00029

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# 475092 (OGC# 146907).

The University of Texas at Austin (the "university") received a request for all communications between a named employee and KNW Networks, Inc. d/b/a Knowledge Networks ("KNW"). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state, and provide documentation showing, you notified KNW of the university's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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 exception you claim and reviewed the submitted information.

You inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-20070 (2012). In Open Records Letter No. 2012-20070, we determined the university (1) must continue to rely on Open Records Letter No. 2012-19336 (2012) as a previous determination and withhold or release the identical information in accordance with that ruling; (2) may withhold some of the requested information under sections 552.107(1)

and 552.111 of the Government Code; (3) must withhold some of the requested information under section 552.117(a)(1) of the Government Code if the employees at issue timely requested confidentiality under section 552.024 of the Government Code and, for the cellular telephone numbers, if a governmental body did not pay for the cellular telephone services at issue; (4) must withhold e-mail addresses under section 552.137 of the Government Code, unless the owners have affirmatively consented to their release or subsection 552.137(c) of the Government Code applies; and (5) must release the remaining information. We note in Open Records Letter No. 2012-19336 we determined, in part, the university must (1) withhold some of the information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold some of the information under section 552.117(a)(1) of the Government Code if it consists of the home telephone number or personal cellular telephone number of an individual who timely requested confidentiality under section 552.024 of the Government Code; (3) withhold e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release or subsection 552.137(c) applies; and (4) release the remaining information but may only release any information protected by copyright in accordance with copyright law. We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the university must continue to rely on Open Records Letter Nos. 2012-20070 and 2012-19336 as previous determinations and withhold or release the information in accordance with those rulings.

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 section 51.914 of the Education Code. Section 51.914(a)(1) reads as follows:

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.*

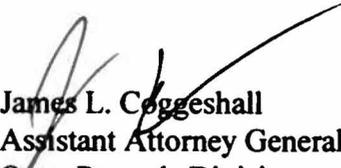
You seek to withhold the submitted information under section 51.914(a)(1) of the Education Code. You state the submitted information contains the details of research, scientific data, and research procedures that relate to a product, device, or process, or application of the same, developed by university employees. You assert the submitted 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. We note the university employee conducting the study at issue posted information on the university’s website regarding the study. You seek to withhold the submitted information, which 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.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this letter, KNW has not submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding any portion of the submitted information constitutes proprietary information of that third party, and the university may not withhold any portion of the submitted information on that basis. *See 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. Thus, the university must release the submitted information to the requestor.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 475092

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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