



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2013

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2013-15490

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# 498808 (TAMU# 13-109).

Texas A&M University (the "university") received a request for all e-mails sent or received by several named individuals during specified time periods. You claim 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 information.

Initially, you acknowledge this request for information was ruled upon in Open Records Letter No. 2013-07696 (2013). In that ruling, we determined the university (1) may withhold the information it marked under section 552.107 of the Government Code; (2) with the exception of the information we marked for release, may withhold the information it marked under section 552.111 of the Government Code; (3) may withhold the information it marked under section 552.116 of the Government Code; and (4) must release the remaining information. You now submit additional information for our review and assert section 552.101 of the Government Code for the information. You acknowledge the university failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office with respect to the newly submitted information. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to

withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument under this section for the submitted information. However, you must continue to follow Open Records Letter No. 2013-07696 with respect to the remaining requested information. *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).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by other statutes, including federal law. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). You assert the submitted information is confidential under section 552.101 of the Government Code in conjunction with the Defense Production Act of 1950. *See* 50 U.S.C. app. §§ 2061-2172. Section 2155 of the appendix to title 50 of the United States Code provides, in part, as follows:

(a) The President shall be entitled, while this Act [sections 2061 to 2172 of this Appendix] is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act [said sections] and the regulations or orders issued thereunder. The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. . . .

...

(d) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President

determines that the withholding thereof is contrary to the interest of the national defense[.]

50 U.S.C. app. § 2155(a), (d). The term “person” includes an “individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.” *Id.* § 2152(15). Thus, we find the term “person” includes the university. Therefore, the President is entitled to obtain information from the university that the President, in his discretion, deems necessary or appropriate to the enforcement or administration of the Defense Production Act. *See id.* § 2155(a).

Section 2171 of the Defense Production Act created the Defense Production Act Committee (“the committee”), which “shall advise the President on the effective use of the authority under [the Defense Production Act] by the departments, agencies, and independent establishments of the Federal Government to which the President has delegated authority under [the Defense Production Act].” *Id.* § 2171(a). The President has by Executive Order designated the members of the committee, which include the Secretary of Commerce (“Commerce”). *See* Exec. Order No. 13,603, 77 Fed. Reg. 16,651, 16,657 (March 22, 2012). Under this authority, Commerce may exercise the power to conduct assessments and collect information in support of the United States industrial base, including obtaining such information from any person in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense. *Id.* at 16,652.

Pursuant to its delegated authority under the Defense Production Act, Commerce adopted section 700.91 of title 15 of the Code of Federal Regulations which provides, in relevant part,

(d) [P]ersons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act, the Selective Service Act and related statutes, and this regulation.

(e) Section [2155(d)] of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the [Defense Production] Act, this regulation, or an official action, is deemed to be confidential under section [2155(d)] of the [Defense Production] Act and shall not be published or disclosed except as required by law.

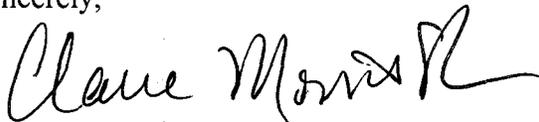
15 C.F.R. § 700.91(d)-(e). Thus, Commerce has determined information submitted to Commerce in connection with its duties under the Defense Production Act is confidential and must not be published or disclosed unless the withholding of such information is contrary to the interest of the national defense.

The submitted information consists of written correspondence from the United States Department of Commerce to one of the named individuals, and an attached Defense Industrial Base Assessment survey. The attached survey and portions of the written correspondence, which we have marked, consist of information Commerce obtained from the university in order to conduct an assessment of the United States Underwater Acoustics Transduction industry. Thus, we find the information at issue was obtained pursuant to Commerce's authority under the Defense Production Act to perform an industry study assessing the capabilities of the United States industrial base to support the national defense. Such information is made confidential by the Defense Production Act and federal regulations. *See* 15 C.F.R. § 700.91(e); 50 U.S.C. app. § 2155(d). We have no indication the President or any other entity with such authority has determined the withholding of the information at issue is contrary to the interest of the national defense. Accordingly, we find the university must withhold the attached survey and the marked portions of the written correspondence pursuant to section 552.101 of the Government Code in conjunction with section 700.91(e) of title 15 of the Code of Federal Regulations and section 2155(d) of the appendix to title 50 of the United States Code. However, you have not demonstrated how the remainder of the written correspondence is confidential under these provisions, and the university may not withhold the remainder of the written correspondence under section 552.101 on that basis. As you raise no further exceptions to disclosure of the remainder of the written correspondence, it 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 498808

Enc. Submitted documents

c: Requestor
(w/o enclosures)