



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2013

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

OR2013-19460

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# 504985 (TAMU ID# 13-440).

Texas A&M University (the "university") received a request for information from a specified period of time pertaining to a specified grant, including veterinary records and necropsy reports for all animals used in related research, communications pertaining to acquiring or purchasing animals for related research, documents pertaining to financial expenditures, and photographs and video footage.<sup>1</sup> You indicate you do not have information responsive to a portion of the request. We understand the university will release some of the requested information to the requestor. You claim some of 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 representative samples of information.<sup>2</sup>

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. Section 552.101 encompasses information protected by other statutes, such as section 51.914 of the Education Code. Section 51.914(a)(1) reads as follows:

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<sup>1</sup>You inform us the requestor was required to make a deposit for payment of anticipated costs for the request under section 552.263 of the Government Code, which the university received. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered received on date governmental body receives deposit or bond).

<sup>2</sup>We assume the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 information you have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code. You explain the information at issue “directly relates to specific research and related processes and research details” of research being conducted by the university’s College of Veterinary Medicine and Biomedical Sciences. You assert the information at issue has the potential for being sold, traded, or licensed for a fee and is therefore confidential pursuant to section 51.914(a)(1). Based on your representations and our review, we find the information you have marked in Exhibit B-1 is confidential under section 51.914(a)(1) of the Education Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 801.353 of the Occupations Code. This section provides in part the following:

- (a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian’s client.
- (b) A veterinarian may not be required to release information concerning the veterinarian’s care of an animal, except on the veterinarian’s receipt of:

- (1) a written authorization or other form of waiver executed by the client; or
- (2) an appropriate court order or subpoena.

Occ. Code § 801.353(a), (b). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* You state the information in Exhibit B-2 pertains to animals used in the specified research grant and "relates to standard and incidental health care" of these animals by the university. We understand the university does not consent to the release of this information. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). We also understand the requestor has not produced an appropriate court order or subpoena to release the information at issue. Based on your arguments and our review, we conclude this information consists of veterinary records that are subject to chapter 801 of the Occupations Code. Accordingly, the university may only release Exhibit B-2 in accordance with section 801.353 of the Occupations Code.

In summary, the university must withhold the information you have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 51.94(a)(1) of the Education Code. The information in Exhibit B-2 may be released only in accordance with section 801.353 of the Occupations Code. 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.

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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/tch

Ref: ID# 504985

Enc. Submitted documents

c: Requestor  
(w/o enclosures)