



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2014

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

OR2014-18151

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# 539050 (TEEX 14.07).

The Texas A&M Engineering Extension Service ("TEEX") received a request for all materials related to the TxDOT Electrical Systems for Contractors Training conducted February 28, 2006 to March 2, 2006, including all training materials, study guides, presentations, and testing materials. 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.

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:

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[.]

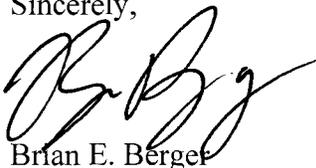
Educ. Code § 51.914(a)(1). As noted in Open Records Decision No. 651 (1997), the legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” ORD 651 at 9-10. Furthermore, whether particular 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 claim the submitted information is confidential under section 51.914(a)(1) of the Education Code because it is related to the TxDOT Electrical Systems Program, a product developed in whole or in part at TEEEX for the Texas Department of Transportation. TEEEX is a part of Texas A&M University, an institution of higher education. You state the product is, and will continue to be, offered for a fee. Thus, the product has a potential for being sold, traded, or licensed for a fee. Based on your representations and our review, we conclude TEEEX 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.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,



Brian E. Berget
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 539050

Enc. Submitted documents

c: Requestor
(w/o enclosures)