



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 19, 1998

Ms. Deena J. Wallace
Assistant General Counsel
The Texas A&M University System
John B. Connally Bldg.
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR98-1508

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115211.

Texas A & M University and Texas Agricultural Experiment Station (collectively, the "University") each received a request for information concerning 1995 and 1996 cotton insecticides field performance trial results. The University states that it has released to the requestor information that concerns "completed research which have either been published, accepted for publication or otherwise made available to the public." You state that the records at issue have not been published, reported or released to individuals or entities other than the sponsors." You assert that the information is excepted from required public disclosure based on sections 552.101 and 552.104 of the Government Code.

Section 552.101 excepts from disclosure information that is deemed confidential by law, including information made confidential by statute. You raise section 51.914 of the Education Code, which provides in pertinent part as follows:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 552, Government Code, 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[.]

We believe the information is “scientific information . . . developed in whole or in part at a state institution of higher education.” 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.” *See* Open Records Decision No. 651 (1997). 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.* 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 university’s assertion that the information has this potential. *See id.*

The University asserts that the requestor’s stated intended use for the information establishes that the information has value.¹ The University also states that “[i]f the information had no value, there would be no market for [the requestor’s] Data Base. . . . [and] the sponsors would not be willing to pay for it.” The University additionally avers that the disclosure of the information “prior to being released for public dissemination would reduce, if not eliminate, [its] ability to effectively compete with the private sector (not subject to the Act) for research funding.”

As the University has determined that the requested information has “a potential for being sold, traded, or licensed for a fee,” we will assume this determination is correct.² *See id.* Accordingly, we conclude that the requested information is made confidential by section 51.914(1) of the Education Code. The University must not release the requested information. Gov’t Code § 552.101.

In light of our conclusion under section 552.101, we need not address your section 552.104 claim. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

¹The requestor has stated that “it is our intention to include this data in our public sector database compilation, in an attempt to provide decision-makers in academia, the government, and industry the ability to conveniently access all of the field product performance data.”

²We note that the requestor has raised several fact questions regarding the University’s assertion that the information has such a potential. However, as we stated above, the opinion process is not the appropriate forum to resolve these fact questions. The university’s determination that information has a potential for being sold, traded, or licensed for a fee is subject to review by a court. *See* Open Records Decision No. 651 (1997) at 10

under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 115211

Enclosures: Submitted documents

cc: Ms. Kimberly O'D Thompson
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201-4675
(w/o enclosures)