



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 24, 1998

Mr. J. Robert Giddings
Office of General Counsel
The University of Texas System
201 West Seventh St.
Austin, Texas 78701-2981

OR98-2846

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119858.

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for the following information:

1. A copy of the Project Summaries for the Acne and Vitiligo studies, which can be found in the consent forms for the respective studies (pages 4 & 5 of the consent forms).¹
2. A copy of the protocol for the Pemphigus (Dapsone) Study.
3. A copy of the consent form for the Herpes Labialis (Fever Blister) study or if not, the exact date I enrolled the first patient into this study.

You indicate that you have provided the requestor with a copy of the document responsive to item 3 of the request. You object to the release of the information responsive to items 1 and 2 of the request. You contend that this information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. You also argue that the information is excepted from disclosure under section 552.110 of the Government Code.

¹You note that the requested project summaries "are independent documents, not part of the consent form."

Since you indicate that the proprietary interests of third parties may be implicated by the release of the information at issue, this office notified the interested third parties about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). This office has received responses from Amgen, Inc., and Johnson & Johnson.

Section 552.101 of the Government Code 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:

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;

(2) *any information relating to* a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is proprietary information or a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties

Educ. Code § 51.914 (emphasis added). At issue are two project summaries and a research protocol. You characterize the project summaries as “condensed version[s] of specific research protocols provided to the University under clinical study agreements.” We agree that this information is within the scope of section 51.914.

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.*

You state that “[c]linical research studies on specific drugs have the inherent potential to produce scientific information that has the potential for being sold, traded, or licensed for a fee.”² As the university has determined that the information at issue is related to scientific information that has a potential for being sold, traded, or licensed for a fee, we will assume this determination is correct.³ *See id.* Accordingly, we conclude that the requested information is made confidential by section 51.914 of the Education Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Because we are able to resolve this matter under section 552.101, we do not address the other arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hatfaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref.: ID# 119858

²You have also submitted copies of clinical trial agreements to this office for review. Because these documents are not specifically requested, we assume that you submitted them to this office for the purpose of showing us the explicit confidentiality provisions that pharmaceutical companies include in clinical trial agreements with the university.

³Of course, the university’s determination that the information has a potential for being sold, traded, or licensed for a fee is subject to judicial review. ORD 651 at 10.

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