



October 8, 1999

Ms. Joanna Harkey
Associate General Counsel
Texas Tech University Health Science Center
3601 4th Street, 2B141
Lubbock, Texas 79430-0001

OR99-2888

Dear Ms. Harkey:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128584.

Texas Tech University Health Science Center (“TTUHSC”) received a request for a copy of a TTUHSC HealthNet¹ production entitled “Grand Rounds: A New Dimension: Hantavirus & Interstitial Pneumonia.” You contend that section 51.914 of the Education Code exempts the requested videotape from disclosure under the Public Information Act.

Section 51.914 of the Education Code provides in 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;

¹You explain that HealthNet is a department of TTUHSC which handles the telecommunications aspects of medicine for the various schools of TTUHSC.

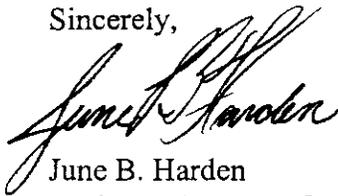
(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is proprietary information or a person, partnership, corporation, or federal agency that has been 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. 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 explain that the requested videotape is copyrighted and is being sold as part of a product marketed by TTUHSC HealthNet. You state that the videotape “was produced as a continuing education credit for physicians . . . [and] has been disseminated and shown only to subscribers of the HealthNet service.” Based on these representations, we conclude that section 51.914 of the Education Code excepts the videotape from disclosure under the Public Information Act.

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 questions about this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/KEH/ch

Ref: ID# 128584

Encl. Submitted documents; videotape

cc: Mr. Brando Logan
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Abilene, Texas 79601
(w/o enclosures)