



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2004

Ms. Carol Longoria
U.T. System Administrator
University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2004-7508

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208332.

The University of Texas at Austin (the "university") received a request for "all contracts with the Southwest Foundation for Biomedical Research for work in relation to the project 'Anthrax Antidote in Animals.'" You claim that portions of the submitted contract are excepted from disclosure under section 552.101 of the Government Code. We have considered your claimed exception to disclosure and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 51.914 of the Education Code 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[.]

Educ. Code § 51.914(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.” 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.* *But see id.* at 10 (stating that university’s determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review).

You argue that the “Statement of Work” reveals procedures and other information that relate to products, devices, or processes developed by the university in collaboration with other researchers and institutions. You further claim that the university can potentially sell or license this information for a fee to other researchers or third parties interested in similar studies. Based on your arguments and our review, we agree that portions of the “Statement of Work” directly reveal the substance of research or proposed research and are, therefore, within the scope of section 51.914.

The remaining portions of the “Statement of Work,” however, are tangential to the proposed research. You have not explained, nor can we discern, how the release of this information would reveal the details of the research at issue. *See generally* Open Records Decision Nos. 557 (1990) (stating that working titles of experiments are not *per se* protected by Educ. Code § 51.914 because release would not permit person to appropriate research nor does information directly reveal substance of proposed research), 497 (1988) (stating that information related to research is not protected if it does not reveal details about research). Accordingly, we have marked the information that the university must withhold under section 552.101 in conjunction with section 51.914 of the Education Code.

You also assert that all of the highlighted information is confidential under section 418.178 of the Government Code. As part of the Texas Homeland Security Act, section 418.178 was added to chapter 418 of the Government Code. Section 418.178 provides:

- (a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.
- (b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

Gov't Code § 418.178. The fact that information may generally relate to biological toxins does not make the information *per se* confidential under section 418.178. *See generally* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting section 418.178 must adequately explain how the responsive records fall within the scope of that provision. *See generally* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). After reviewing your arguments, we conclude that the university has failed to demonstrate how the remaining information, which consists of the names of researchers and other general information relating to the proposed research, is protected under section 418.178(b). Furthermore, as clearly noted in the request itself, the information you seek to withhold is available to the public via the Computer Retrieval of Information on Scientific Projects database that is maintained by the National Institutes of Health. Accordingly, the university must release the remaining highlighted information.

In summary, the university must withhold the information we have marked under section 51.914 of the Education Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

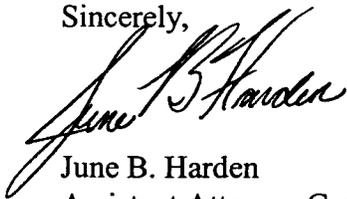
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 208332

Enc: Submitted documents

c: Mr. Edward Hammond
The Sunshine Project
101 West 6th Street, Suite 607
Austin, Texas 78701
(w/o enclosures)