



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 2, 2009

Ms. Neera Chatterjee
Office of the General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2009-02689

Dear Ms. Chatterjee:

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# 336129.

The University of Texas at Austin (the "university") received a request for nine categories of documents pertaining to the use of animals for research at the university, including United States Department of Agriculture inspections and complaints, correspondence between the university and the National Institute of Health, documents relating to the university's Institutional Animal Care and Use Committee (the "IACUC"), and information concerning the research protocols of three named individuals. You state you have released some information responsive to these requests. You state that you have no responsive information regarding a portion of the request.¹ You also state that the university is withholding some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.² You have also redacted social security numbers pursuant to section

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note that our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted records.

552.147 of the Government Code.³ You contend that a portion of the submitted information is not subject to the Act. You claim the remaining submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the arguments you make and reviewed the submitted information. We have also considered comments received from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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. You argue that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.914(1) of the Education Code. 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." Open Records Decision No. 651 at 9 (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 governmental body'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). We note that section 51.914 is not applicable to working titles of experiments or other information that does not reveal the details of the research. *See* Open Records Decision Nos. 557 at 3 (1990), 497 at 6-7 (1988).

³A governmental body may redact social security numbers without seeking a determination from this office. Gov't Code § 552.147(b).

You state that the submitted information consists of research protocols submitted to the university's IACUC by the named individuals. You state that "[d]isclosure . . . would directly reveal the substance of the research and permit third parties to appropriate such research." You further assert that "[t]he type of information reflected in the protocols, and any IACUC correspondences including such information, does have the potential for being sold, traded, or licensed for a fee." Based on your representations and our review, we agree that parts of the submitted information, which we have marked, reveal the substance of the research at issue and are therefore confidential under section 51.914 of the Education Code and excepted under section 552.101 of the Government Code.

However, the submitted material also contains general personnel information and other material tangential to the substance of the proposed research. We find that this information does not reveal the substance of the research at issue and is not confidential under section 51.914. Accordingly, this remaining information may not be withheld under section 552.101 on that basis. We now address your remaining arguments for this information.

You assert that the University of Texas Electronic Identification Numbers ("UTEID") in the submitted information are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You represent that UTEIDs are used solely to access the university's computer mainframe and have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we determine that the UTEIDs you have marked do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released to the requestor.

The submitted information contains an e-mail address obtained from a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). You inform us that the member of the public has not affirmatively consented to the release of the e-mail address contained in the submitted information. Accordingly, the university must withhold the e-mail address you have marked under section 552.137.

In summary, the UTEIDS you have marked are not subject to the Act. The university must withhold the marked research protocol information pursuant to section 552.101 of the Government Code in conjunction with section 51.914(1) of the Education Code. It must also withhold the marked e-mail address pursuant to section 552.137 of the Government Code. The remaining submitted information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/sdk

Ref: ID# 336129

Enc. Submitted documents

c: Requestor
(w/o enclosures)