



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-10110

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# 349671.

The University of Texas at Austin (the "university") received a request for the following information concerning research on thin-film solar by Professor Brian Korgel and his students: 1) the identity of the private sponsor for the research; 2) the amount of money the company agreed to pay or has paid already; and 3) the contract with the company. The university asserts the information it marked is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. In addition, because release of the information may implicate the company's proprietary interest, the university notified the company of the request and of its right to submit arguments to this office as to why the information should not be released. Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released); *see also* 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 to disclosure under Public Information Act in certain circumstances). We have considered the university's and company's arguments and reviewed the submitted information.

First, the university states it has no objection to release of the sponsor's identity but the company does object. However, in its brief, the company only objects to release of the

details of the program, not its identity or the requested amount of money invested. In fact, the company revealed both items in its brief and has sent a copy of its brief to the requestor.

Next, section 552.101 of the Government Code 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, 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 university's determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review). Section 51.914 is not applicable to a working title 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).

The university explains the marked information consists of research conducted by the university faculty regarding a product that has the potential for being sold, traded, or licensed for a fee, and release of the information would reveal details of the research. We have reviewed the marked information and agree it reveals the substance of the research at issue. Therefore, the university must withhold the information it marked under section 51.914 of the Education Code. Because section 51.914 is dispositive, we do not address the company's section 552.110 assertion.

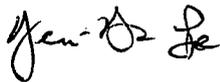
Section 552.136 states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained

by or for a governmental body is confidential.” *Id.* § 552.136(b). “Access device” is an account number, personal identification number, electronic serial number, mobile identification number, or other instrument identifier or means of account access that alone or in conjunction with another access device may be used to 1) obtain money, goods, services, or another thing of value or 2) initiate a transfer of funds other than a transfer originated solely by paper instrument. Accordingly, the university must withhold the access device numbers it marked under section 552.136 of the Government Code.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 349671

Enc. Submitted documents

c: Requestor
(w/o enclosures)