



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2010

Mr. R. Brooks Moore  
Assistant General Counsel  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2010-11834

Dear Mr. Moore:

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# 390850 (SO-10-045).

Texas A&M University, Texas AgriLife Research ("AgriLife"), and the Texas A&M University System (collectively, the "university") received a request for all material transfer agreements over a specified time period for all sorghum lines whose name begins with the letter R and for all sorghum lines alleged to have been developed in Colorado. You state you have released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the university failed to submit the requested information within the statutory time periods prescribed by section 552.301(e) of the Government Code. *See* Gov't Code § 552.301 (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make

compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 51.914 of the Education Code. Section 51.914 of the Education Code provides in relevant part:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under [the Act], 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. 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 system's assertion that the information has this potential. *But see id.* at 9 (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(1) 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).

You state the submitted information consists of contracts between the system and other entities pertaining to the transfer of sorghum germplasm developed by AgriLife researchers for the purposes of testing and evaluation only. You state these contracts outline the terms pursuant to which the sorghum line subject of the contract may be utilized. You state this information has a potential for being sold, licensed, or traded for a fee. Further, you argue

the information you have marked describes the purposes and goals of the research and identifies the specific sorghum lines and quantities developed by AgriLife researchers that are needed to produce particular sorghum hybrids. Based on your representations and our review, we find the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.914(1) of the Education Code. However, the remaining information you marked consists of general background facts and objectives, not technical details about how to achieve such goals. Because the remaining information does not reveal the specifics of any actual research, we determine the remaining information you marked may not be withheld under section 51.914(1) of the Education Code. As you raise no further exceptions to disclosure of this information, it 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](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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/tp

Ref: ID# 390850

Enc. Submitted documents

c: Requestor  
(w/o enclosures)