



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2011

Ms. Kristen Pauling Doyle  
General Counsel  
Cancer Prevention & Research Institute of Texas  
P.O. Box 12097  
Austin, Texas 78711

OR2011-06264

Dear Ms. Doyle:

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# 417037.

The Cancer Prevention and Research Institute of Texas (the "institute") received a request for copies of five specified funded grant applications, including reviewer comments. You state the institute has released some of the requested information. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Further, you state you have notified The University of Texas Southwestern Medical Center at Dallas (the "university") of the request. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received arguments from the university. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 545 (1990) (finding financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 523 (1989).

You state you have marked salary information related to private employees. Upon review, we find that the salary information pertaining to private employees, which you have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the institute must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

The university argues that portions of the submitted information are subject to section 51.914 of the Education Code, which is also encompassed by section 552.101. Section 51.914 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(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 an institution of higher education’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).

The information the university seeks to withhold consists of grant funding applications for cancer research and prevention services. This application outlines the proposed research, its cost, and its commercial and financial implications. The university, a state institution of higher education, informs us that its applications consist of information developed by them which has the potential for being sold, traded, or licensed for a fee. The university states that disclosure of this information would directly reveal the substance of the research and permit third parties to appropriate it. Accordingly, we find the institute must withhold the information the university has marked under section 51.914(1) of the Education Code.

In summary, the institute must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The institute must withhold the information the university has marked under section 51.914(1) of the Education Code. The remaining 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 417037

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Zeena Angadicheril  
University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701  
(w/o enclosures)