



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2013

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2013-03740

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# 480480.

The Texas AgriLife Extension Service of the Texas A&M University System (the "system") received a request for information pertaining to a specified contract with the system's Engineering Extension Service ("TEEX") pertaining to a proposed rail yard. You claim portions of the requested information are exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state a portion of the submitted information, submitted as Exhibits B and D, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-18794 (2012). In that ruling, we determined the system must withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code, and must release the remaining information. We have no indication there has been any change in the law, facts,

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

or circumstances on which the previous ruling was based. Accordingly, the system must rely on Open Records Letter No. 2012-18794 as a previous determination and withhold or release the information in Exhibits B and D in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments under section 552.101 of the Government Code for the remaining information not encompassed by Open Records Letter No. 2012-18794.

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 section encompasses information protected by other statutes, such as section 51.914 of the Education Code, which provides, in pertinent part:

(a) In order to protect the actual or potential value, the following information is confidential and is not subject to disclosure under [the Act] or otherwise:

...

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is the proprietary information of a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties[.]

Educ. Code § 51.914(a)(2). 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.

You state the submitted information reveals “data developed by [the system] on behalf of [TEEX] as part of a research agreement between [Union Pacific Rail Road (“Union Pacific”) and TEEX.” You further state “the research study was performed by [the system] using [Union Pacific]’s proprietary information.” You also inform us, and the submitted information reflects, that the system entered into an agreement with Union Pacific that prohibits the system from disclosing proprietary information to outside parties. Based on your representations and our review, we agree the submitted information in Exhibit C is

confidential under section 51.914(a)(2) of the Education Code, and the system must withhold it under section 552.101 of the Government Code.

In summary, the system must rely on Open Records Letter No. 2012-18794 as a previous determination and withhold or release the information in Exhibits B and D in accordance with that ruling. The system must withhold the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 51.914 of the Education 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, toll free at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 480480

Enc. Submitted documents

c: Requestor
(w/o enclosures)