



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 2, 2015

Ms. Ruth E. Shapiro  
Senior Assistant General Counsel  
Office of the General Counsel  
University of Houston System  
311 E Cullen Building  
Houston, Texas 77204-2028

OR2015-13350

Dear Ms. Shapiro:

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# 569711 (University File No. IR02356).

The University of Houston (the "university") received a request for seven categories of information related to policies and procedures regarding nonhuman primates.<sup>1</sup> You state the university released a portion of the information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor.<sup>2</sup> *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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<sup>1</sup>We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>Although the requestor asserts the university did not comply with section 552.301 in requesting this decision, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this exception to the submitted information. *See* Gov't Code § 552.301 (b), (e); *see also id.* §§ 552.007, .302, .352.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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:

(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; [or]

(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)(1)-(2). 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.” ORD 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).

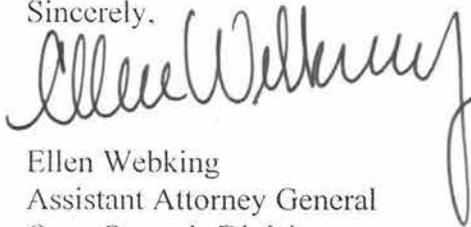
You state the university has developed protocols that “all directly relate to specific research and experimental processes being conducted to gain a further understanding of certain health conditions and future treatment of those conditions.” You state the research process and information are “intended to improve medical care in humans by acquiring further understanding of the conditions and proposed treatments being studied through animal

research.” You state this research involves “particular scientific processes with a potential for being sold, traded, or licensed for a fee.” Based on your representations and our review, we agree the submitted information is confidential under section 51.914 of the Education Code and the university must withhold it under section 552.101 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 569711

Enc. Submitted documents

c: Requestor  
(w/o enclosures)