



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Mr. R. Brooks Moore  
Managing General Counsel  
Office of General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2015-21444

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# 582890 (A&M ORR ID #TAMU 15-595).

Texas A&M University ("university") received a request for e-mails sent to or from a named employee regarding the golden-cheeked warbler during a specified period of time.<sup>1</sup> You state you have released some information. 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 representative sample of information.<sup>2</sup> We have also considered comments submitted by the requestor. *See Gov't Code § 552.304*

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<sup>1</sup>We note the university asked for and received clarification regarding this request. *See Gov't Code § 552.222* (providing that 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

(interested party may submit comments stating why information should or should not be released).

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

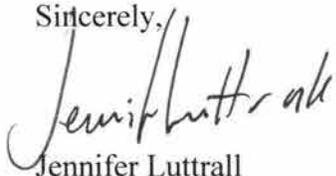
Educ. Code § 51.914(a)(1). As noted in Open Records Decision No. 651 (1997), the legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” *See generally* ORD 651 at 9-10. Furthermore, whether particular scientific information has such a potential is a question of fact 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.* However, a governmental body’s determination that information has a potential for being sold, traded, or licensed for a fee is subject to judicial review. *See id.* We note 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 explain the information at issue consists of research data and an unpublished manuscript authored by the Texas A&M Institute of Renewable Natural Resources. You also state this material is related to research projects and contains scientific and other information that has the potential for being sold, traded, or licensed for a fee. Based on your representations and our review, we conclude the submitted information is confidential under section 51.914 of the Education Code, and the university must withhold the submitted information 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,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the typed name.

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 582890

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)