



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 14, 2016

Ms. Claudene Marshall  
Assistant General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2016-13523

Dear Ms. Marshall:

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# 617458 (ORR# W0000723-041816).

Texas A&M University (the "university") received a request for all records pertaining to a specified dog and any protocols for any projects to which the specified dog was assigned during a particular time period. 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>1</sup>

Initially, you state, and we agree, some of the requested information is subject to a previous request for information, in response to which this office issued Open Records Letter No. 2015-12015 (2015). In Open Records Letter No. 2015-12015, we concluded the university must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the university must continue to rely on Open Records Letter

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<sup>1</sup>We assume the "representative samples" of records submitted to this office are 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.

No. 2015-12015 as a previous determination and withhold the identical information 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 information is or is not excepted from disclosure). For the information that is not subject to Open Records Letter No. 2015-12015, we will consider the university's arguments against disclosure.

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. Section 552.101 encompasses information protected by other statutes, such as section 51.914 of the Education Code. Section 51.914(a)(1) reads as follows:

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." ORD 651 at 9-10. 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.* at 10. 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 seek to withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code. You state this information contains protocols presented to the university's Institutional Animal Care and Use Committee. You explain the information at issue "contains the details of specific research projects." You assert the information at issue has the potential for being sold, traded,

or licensed for a fee and is therefore confidential pursuant to section 51.914(a)(1). Based on your representations and our review, we find the submitted information is confidential under section 51.914(a)(1) of the Education Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

In summary, the university must continue to rely on Open Records Letter No. 2015-12015 as a previous determination and withhold the identical information in accordance with that ruling. The university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) 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.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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 617458

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.