



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2017

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

OR2016-26329A

Dear Ms. Marshall:

This office issued Open Records Letter No. 2016-26329 (2016) on November 29, 2016. Since that date, we have received new information that affects the facts upon which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on November 29, 2016. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 651516.

Texas A&M University (the "university") received a request for information related to the drug testing of greyhounds from a specified time period. The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions the university claims and reviewed the submitted representative sample of information.¹

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.

Section 552.101 of the Government Code exempts 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 801.353 of the Occupations Code. This section provides in part the following:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian’s client.

(b) A veterinarian may not be required to release information concerning the veterinarian’s care of an animal, except on the veterinarian’s receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate court order or subpoena.

Occ. Code § 801.353(a), (b). Section 801.353 limits a veterinarian’s release of information concerning the veterinarian’s care of an animal to certain circumstances. *See id.* The university states it “provides diagnostic veterinary services in accordance with section 88.708 of the Education Code, and these services are provided by licensed veterinarians.” *See* Educ. Code § 88.708. The university does not indicate it has received consent from the owner or an appropriate court order or subpoena to release the submitted information. *See* Occ. Code § 801.351(a)(1) (defining “client” as “owner or other caretaker of the animal”). Based on these arguments and our review, we conclude Exhibit B-2 consists of veterinary records that are subject to chapter 801 of the Occupations Code. Accordingly, the university may only release Exhibit B-2 in accordance with section 801.353 of the Occupations Code.

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university states it has specific marketplace interests in the information at issue because the university is competing with other institutions of higher education and laboratories who provide animal testing services. In addition, the university states disclosure of Exhibit B-1 poses a specific threat of harm to the university’s interests in the animal testing field. The university explains “a public list of drugs that [the university] tests for would potentially enable owners of animals to take preventative measures which would reduce the likelihood of detection of a certain drug using [the university’s] testing protocols.” The university additionally states “a public list of drug tests that the lab performs would harm [the university’s] interests by providing its competitors with knowledge of the proprietary testing protocols used by [the university] and this knowledge would erode certain competitive advantages held by [the university].” After review of the information at issue and consideration of the arguments, we find the university

has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold Exhibit B-1 under section 552.104(a) of the Government Code.

In summary, the university may only release Exhibit B-2 in accordance with section 801.353 of the Occupations Code. The university may withhold Exhibit B-1 under section 552.104(a) 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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 651516

Enc. Submitted documents

c: Requestor
(w/o enclosures)