



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2017

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2901

OR2017-03577

Dear Ms. Tynan:

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# 646860 (OGC# 172977).

The University of Texas Health Science Center at San Antonio (the "university") received a request for the full findings, proposal, interim reports, annual reports, and addenda pertaining to a specified project during a specified time period. You state you will release some 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.

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 section 51.914(a)(1) of the Education Code, which reads as follows:

(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[.]” 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 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).

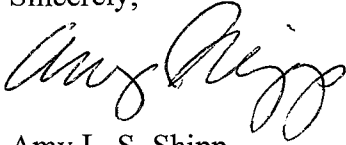
You seek to withhold the submitted information under section 51.914(a)(1). You state the university is an institution of higher education. *See* Educ. Code § 61.003(5), (8). You also state the submitted information contains details of research conducted by university faculty. Additionally, you state the submitted information consists of “data and in-depth analysis of the [specified project], including specifics regarding curriculum, strategy, implementation, review and outcomes[.]” and “will be used to make substantive and strategic changes to the program[.]” Furthermore, you explain, that in order to continue expanding, the program has considered licensing the curriculum for a fee, and the university has obtained trademark and copyright protection for “certain logos, materials and curriculum.” Based on your representations and our review of the information at issue, we find you have demonstrated the applicability of section 51.914 of the Education Code to the submitted information. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.914(a) 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,

A handwritten signature in black ink, appearing to read "Amy Shipp". The signature is written in a cursive, flowing style.

Amy L. S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/eb

Ref: ID# 646860

Enc. Submitted documents

c: Requestor  
(w/o enclosures)