



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2017

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

OR2017-04618

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# 647682 (Reference# W002205-120616).

The Texas A&M Veterinary Medical Diagnostic Laboratory (the "laboratory") received a request for information related to Chronic Wasting Disease; information pertaining to a specified United States Department of Agriculture report; information pertaining to payments made to specified entities; and information pertaining to certain animals and a specified case number. You state you have no information responsive to portions of the request.<sup>1</sup> You also state you will release 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>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<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 those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This section encompasses section 51.914 of the Education Code, which provides, in pertinent part, the following:

(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 Exhibit B-1 under section 51.914(a)(1). We understand the university is an institution of higher education. *See* Educ. Code § 61.003(8). You state Exhibit B-1 contains the details of research being conducted by the university. Additionally, you state Exhibit B-1 “consists of protocols used . . . for the detection of Scrapie and Chronic Wasting Disease and contains the details of specific research projects that have the potential to be sold, traded, or licensed for a fee.” 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 Exhibit B-1. Accordingly, the university must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code.

Section 552.101 of the Government Code also encompasses section 801.353 of the Occupations Code, which 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.

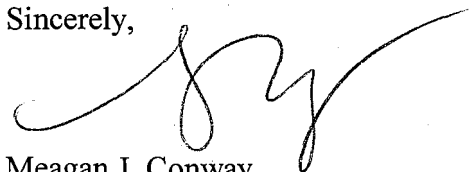
Occ. Code § 801.353(a), (b). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* The university states it "provides diagnostic veterinary services in accordance with section 88.708 of the Education Code, and 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 information at issue. *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.

In summary, the university must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code. The university may only release Exhibit B-2 in accordance with section 801.353 of the Occupations 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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/sb

Ref: ID# 647682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)