



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 4, 2018

Mr. R. Brooks Moore  
Deputy General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2018-00228

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# 690337 (ORR# R001928-101117).

Texas A&M University ("TAMU") received a request for birth or breeding records associated with specified protocols. TAMU states it has disclosed some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>2</sup> We have also considered comments submitted by a representative of the requestor. *See Gov't Code*

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<sup>1</sup>We note this office asked TAMU to provide additional information pursuant to section 552.303 of the Government Code. *See Gov't Code* § 552.303(c)-(d) (it attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day afterdate of receipt of notice). We have received and considered the correspondence sent by TAMU pursuant to that request.

<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.

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

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

TAMU states the submitted information relates to a TAMU research project, which concerns the medical condition of animals. TAMU also informs us the information has the potential to be sold, traded, or licensed for a fee because it relates to research seeking to develop a treatment for a particular type of muscular dystrophy. Based on these representations, we conclude the submitted information is confidential under section 51.914(a)(1) of the Education Code, and TAMU must withhold it under section 552.101 of the Government Code on that ground.<sup>3</sup>

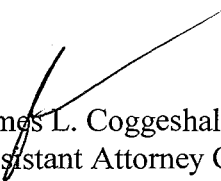
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<sup>3</sup>As our ruling is dispositive, we do not address the other argument of TAMU to withhold this information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tdw

Ref: ID# 690337

Enc. Submitted documents

c: Requestor  
(w/o enclosures)