



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 26, 2019

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

OR2019-08268

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# 756611 (C000043-010819).

Texas AgriLife Research, a component agency of the Texas A&M University System (the "university"), received a request for progress reports produced by the university during a particular period of time. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.104(a) of the Government Code excepts 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). We understand the university has specific marketplace interests in the information at issue because the university is competing with

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<sup>1</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.

other entities for research funding. In addition, the university states release of this information would allow a competitor to “replicate [the university’s] research and commercialization plans, the unique approach of [the university] in competing for such funds, and [help] the competitor undercut [the university’s] negotiated indirect cost recovery rates.” 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 the information you marked under section 552.104(a) of the Government Code.<sup>2</sup>

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).

The university states the information you marked relates to specific details of university research projects. The university also informs us the information at issue has the potential

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

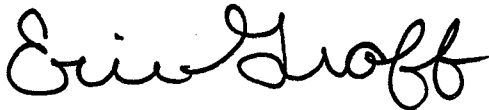
to be sold, traded, or licensed for a fee. Based on these representations, we conclude the information you marked is confidential under section 51.914(a)(1), and the university must withhold it under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code.

In summary, the university may withhold the information you marked under section 552.104(a) of the Government Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.914(a)(1) of the Education Code. The university must release the remaining 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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jxd

Ref: ID# 756611

Enc. Submitted documents

c: Requestor  
(w/o enclosures)