



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Ms. Jennifer Burnett  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
210 West Seventh Street  
Austin, Texas 78701-2901

OR2019-26558

Dear Ms. Burnett:

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# 787320 (OGC# 191750).

The University of Texas Southwestern Medical Center (the "university") received a request for specified contracts between the university and Texas Tech University Health Science Center ("TTUHSC") and payments made by the university to TTUHSC during a specified time period.<sup>1</sup> You state the university has released some of the requested information. You

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<sup>1</sup>We note the university asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The university informs us it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. See Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. See *id.* § 552.263(a). The university informs us it received the required deposit on July 2, 2019. See *id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of TTUHSC. Accordingly, you state, and provide documentation showing, the university notified TTUHSC of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from TTUHSC. We have also received comments from the requestor. *Id.* We have considered the submitted arguments 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.” *Id.* § 552.101. This section encompasses section 51.914 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; [or]

...

(b) Information maintained by or for an institution of higher education that would reveal the institution's plans or negotiations for commercialization or a proposed research agreement, contract, or grant, or that consists of unpublished research or data that may be commercialized, is not subject to [the Act], unless the information has been published, is patented, or is otherwise subject to an executed license, sponsored research agreement, or research contract or grant. In this subsection, “institution of higher education” has the meaning assigned by Section 61.003 [of the Education Code].

Educ. Code § 51.914(a)(1), (b). 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.

The university informs us it is an institution of higher education. *See* Educ. Code § 61.003(5), (8). Further, TTUHSC informs us it is an institution of higher education. The university and TTUHSC state the information the university marked and the information TTUHSC indicated consist of technological and scientific information developed, in part, by university and TTUHSC employees. The university and TTUHSC also state the information at issue has the potential for being sold, traded, or licensed for a fee. Further, the university and TTUHSC state the information at issue consists of research data that is not yet published and may be commercialized. The university and TTUHSC argue this information is excepted from disclosure pursuant to 51.914(b). Accordingly, the university must withhold the information the university marked and the information TTUHSC indicated under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code.<sup>2</sup>

Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136; *see also id.* § 552.136(a) (defining “access device”). Accordingly, we find the university must withhold the bank account numbers TTUHSC indicated under section 552.136 of the Government Code.

In summary, the university must withhold the information the university marked and the information TTUHSC indicated under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. The university must withhold the bank account numbers TTUHSC indicated under section 552.136 of the Government 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.

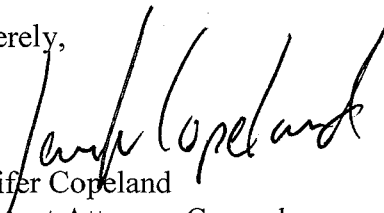
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/gw

Ref: ID# 787320

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)