



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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September 6, 1974

The Honorable James E. Peavy, M.D.  
Commissioner  
Texas State Department of Health  
Austin, Texas

Open Records Decision No. 48

Re: Department of Health  
records of routine  
examination of dairy  
products and meat.

Dear Dr. Peavy:

Pursuant to Sec. 7(a) of the Open Records Act, Art. 6252-17a, V. T. C. S., you ask whether information in laboratory analysis reports on retail dairy products and ground beef are excepted from disclosure by Sec. 3(a)(4) of the Act, which excepts "information which, if released, would give advantage to competitors or bidders."

The information requested is prepared by the Department of Health in carrying out its duties to sample and test dairy products under Arts. 165-3 and 165-3a, V. T. C. S., and to inspect meat under the Texas Meat and Poultry Inspection Act, Art. 4476-7, V. T. C. S.

You contend that the information requested "in the hands of untrained personnel would give a definite advantage to competitors in both the meat and dairy industries and would give a distinct advantage to out-of-state competitors in states which do not possess legislation similar to Article 6252-17a."

The whole purpose of the Act being to make information accessible to the public, its provisions must be "liberally construed in favor of the granting of any request for information." Sec. 14(d).

The information sought here is data available to any person with the resources and facilities to perform the tests, and does not contain trade secrets or similar information. The resources and facilities used are those of the people of Texas, and the tests are conducted on their behalf. No contention is made that disclosure would significantly harm the public or any specific governmental interest.

Whatever information was intended to be excepted by Sec. 3(a)(4), we do not believe that it was intended to protect a competitive situation founded on the public's ignorance of the content or wholesomeness of food products.

The Act does not permit restricting release of information only to trained or qualified persons capable of interpreting it. If it is public information, it is available to any person. See Secs. 3(a), 4, 5(b), 14(a). In a case where test scores on hearing aids tested by a federal agency were required to be disclosed under the federal Freedom of Information Act, 5 U.S.C.A. Sec. 552, the court said:

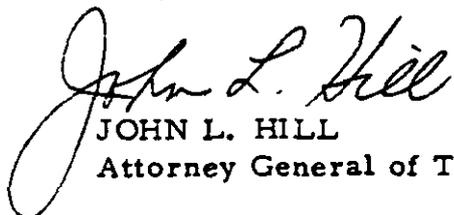
We find that there will be no significant harm to the public from release of the raw scores. For the most part the scores - - measuring such factors as harmonic distortion and signal-to-noise ratio in scientific units - - will be unintelligible to the layman. Any possible misinterpretation of the data by professionals can be avoided . . . by releasing explanatory material with the scores. Consumers Union of the United States, Inc. v. Veterans Administration, 301 F.Supp. 796, 807 (S.D. N. Y. 1969).

Under the federal Freedom of Information Act, which is similar to the Texas Open Records Act, letters of warning sent to meat and poultry processors by the United States Department of Agriculture have been required to be disclosed, Wellford v. Hardin, 444 F.2d 21 (4th Cir. 1971); laboratory work notes, data, and computations made on the content of imported fabric have been required to be disclosed, Verrazzano Trading Corp. v. United States, 349 F.Supp. 1401 (Customs Court 1972); medical and scientific data considered in connection with issuance of lead regulations under the Clean Air Act have been required to be disclosed, Ethyl Corp. v. Environmental Protection Agency, 478 F.2d 47 (4th Cir. 1973); and performance reports on an aerospace contractor have been required to be disclosed, Grumman Aircraft Engineering Corp. v. Renegotiation Board, 425 F.2d 578 (D.C. Cir. 1970).

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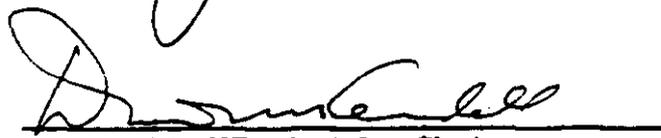
While the federal Act does not have an exception similar to our Sec. 3(a)(4), these cases are illustrative of the type of information regularly available from federal agencies. We regard them as persuasive in deciding that the information requested is not excepted from disclosure by Sec. 3(a)(4), and should be disclosed.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
C. J. CARL, Staff Legislative Assistant

  
DAVID M. KENDALL, Chairman  
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