



# The Attorney General of Texas

September 22, 1981

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Mr. James B. Bond  
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Texas A & M University System  
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Open Records Decision No. 280

Re: Availability under the Open  
Records Act of research done at  
Texas Veterinary Medical  
Diagnostic Laboratory

Dear Mr. Bond:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of information relating to certain research performed at the Texas Veterinary Medical Diagnostic Laboratory [hereinafter "TVMDL"]. Although the TVMDL is not a part of the Texas A & M University System, it is governed by the system's board of regents.

The director of the TVMDL is presently the defendant in a lawsuit filed by Impro Products, Inc., alleging that "certain statements made by [the director] in the course and scope of his professional duties constituted a type of libel referred to by the plaintiff as 'product disparagement.'" Notice has been given that a claim may be made against the TVMDL, Texas A & M University, and the state of Texas. The director is being represented in this cause of action both by this office and by the office of general counsel of the university system. The plaintiff in the pending action against the director now seeks to obtain "all information within the control of the Texas Veterinary Medical Diagnostic Laboratory or the Texas A & M University System relating to the funding, authorization and publication of research and the actual research for the article entitled 'Antibody in "Impro," (Immune Protein) a Commercial Whey Antibody Blend,' which was published in the September, 1980 issue of the Journal of Dairy Science."

The requestor contends that this information is available under section 6(5) of article 6252-17a, which provides that certain information is specifically made public. However, as the court observed in Houston Chronicle Publishing Co. v. City of Houston, 531 S.W. 2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W. 2d 559 (Tex. 1976), section 6 expressly states that "without limiting the meaning of other sections of this Act. . ." certain information is made public. At page 185, the court stated that:

The legislature did not intend for section 6 to diminish the force of the exclusions contained in section 3.

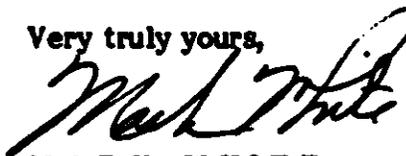
Thus, in our opinion, we need only determine whether the material at issue here is excepted under section 3(a)(3).

Section 3(a)(3) of the Open Records Act excepts from disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In this case, an officer of the TVMDL, a state agency, is already a party to civil litigation as a consequence of his office. The assistant attorney general handling this case has determined that the requested information "should be withheld from public inspection." In our opinion, such determination, coupled with the existence of pending litigation which is clearly related to the requested information, clearly invokes the protection of section 3(a)(3). Accordingly, the research material at issue here is excepted from disclosure thereunder. Open Records Decision No. 266 (1981).

Very truly yours,



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