



The Attorney General of Texas

January 15, 1982

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An Equal Opportunity/
Affirmative Action Employer

Robert Bernstein, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

Open Records Decision No. 303

Re: Whether details of the
manufacture of medication
should be withheld from dis-
closure under the Open Records
Act

Dear Dr. Bernstein:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether details regarding the manufacture of a certain medication are available to the public.

Ortho-Tex of San Antonio, the manufacturer of chemolase, a proteolytic enzyme used in the treatment of lumbar disc disease, recently submitted an application to the Texas Department of Health to manufacture, sell and distribute chemolase in the state of Texas. A competitor has requested a copy of that portion of the application which provides the details of the method of manufacturing chemolase. You suggest that this information is excepted from disclosure under section 3(a)(10) of the Open Records Act as:

trade secrets and commercial or financial
information obtained from a person and privileged
or confidential by statute or judicial decision.

The section 3(a)(10) exception is patterned after an almost identical provision in the federal Freedom of Information Act, which exempts "trade secrets and commercial or financial information obtained from any person and privileged or confidential." 5 U.S.C. §552(b)(4). When the legislature adopts language from another jurisdiction, it is presumed to have intended it to have the same meaning. State v. Weiss, 171 S.W.2d 848, 851 (Tex. 1943). The legislative history of the federal provision makes it clear that manufacturing processes were intended to be included within this exception. The House Report accompanying the legislation notes that the exception:

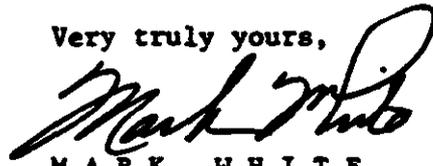
...exempts such material if it would not
customarily be made public by the person from whom

it was obtained by the Government. The exemption would include business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiation positions or requirements in the case of labor-management mediations. (Emphasis added).

House Report No. 1497, 89th Cong., 2d Sess. 10 (1966), U.S. Code Cong. & Adm. News 2148, 2427. See Open Records Decision Nos. 255 (1980); 107 (1975).

Since a manufacturing process is clearly within the meaning of "trade secret," and since the applicant, Ortho-Tex, regards the information as a "trade secret," we are of the opinion that the details of the method of manufacturing chemolase are excepted from disclosure under section 3(a)(10) of the Open Records Act.

Very truly yours,



MARK WHITE
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