



**THE ATTORNEY GENERAL  
OF TEXAS**

June 27, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. J. Scott Chafin  
University Counsel  
University of Houston System  
4600 Gulf Freeway, Suite 421  
Houston, Texas 77023

Open Records Decision No. 497

Re: Whether information related to the University of Houston patent applications on superconductivity research is available under the Texas Open Records Act, article 6252-17a, V.T.C.S. (RQ-1321)

Dear Mr. Chafin:

You ask whether information related to patent applications on superconductivity research at the University of Houston is protected from required disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. You also ask two preliminary procedural questions about the manner in which the requestor sought this information from the university.

Your first procedural question relates to the person within a governmental body to whom a request for information must be made. In this case, the requestor sent his request to Ms. Debbie Hanna, Chairman of the Board of Regents of the University of Houston System. You note that section 4 of the Open Records Act provides in part:

On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. (Emphasis added.)

Section 5(a) states that "[t]he chief administrative officer of the governmental body shall be the custodian of public records." You indicate that the chancellor, rather than the chairman of the board, is the custodian of information for the university. For this reason, you assert that this

request is not "proper." In effect, you allege that sections 4 and 5 of the act require members of the public to request information specifically from the chief administrative officer of a governmental body; a failure to name the chief administrative officer would render a request invalid. We disagree.

The purpose of sections 4 and 5 is to place a legal duty on the custodian of information, defined as the governmental body's chief administrative officer, to produce public information. The purpose of sections 4 and 5 is not to require that a requestor actually name the chief administrative officer.

This conclusion is supported by the language of section 5:

(a) The chief administrative officer of the governmental body shall be the custodian of public records, and the custodian shall be responsible for the preservation and care of the public records of the governmental body. It shall be the duty of the custodian of public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected and preserved from deterioration, alteration, mutilation, loss, removal, or destruction; and that public records are repaired, renovated, or rebound when necessary to preserve them properly. When records are no longer currently in use, it shall be within the discretion of the agency to determine a period of time for which said records will be preserved.

(b) Neither the custodian nor his agent who controls the use of public records shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested or establishing whether the custodian is authorized under Subsection (e) [sic] of Section 4A of this Act to refuse to honor the request for the records. The custodian or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility

for the full exercise of the right granted by this Act. (Emphasis added.)

The language of section 5 assumes that the custodian of information will not be handling personally all requests for public records. Subsection (a) of section 5 makes the custodian responsible for seeing that "public records are made available for public inspection and copying." By referring to the custodian's "agent who controls the use of public records," subsection (b) of section 5 assumes that the custodian will delegate the responsibility for handling open records requests. Because of the ordinary delegation of responsibility in governmental bodies, it is unlikely that routine requests, even if they name the chief administrative officer, always reach the chief administrative officer.

Consequently, we believe sections 4 and 5 of the Open Records Act place an implicit duty on chief administrative officers to instruct their staffs about compliance with the Open Records Act and to make public the identity of persons within the governmental body to whom an open records request should be directed. See generally Open Records Decision No. 342 (1982). Sections 4 and 5 do not require that a requestor use any "magic" words such as naming the chief administrative officer so long as the request reasonably can be identified as a request for public records. Whether a particular request reasonably can be identified as such is a fact question that must be resolved on a case-by-case basis.

It has also been suggested that there is a question here about compliance with the 10 day rule. See art. 6252-17a, § 7(a). We have examined the record and find no indication that this issue has any basis in the present instance.

Your second procedural question relates to the breadth of this request for information. This requestor sought:

copies of all patent applications, patent searches, patent strategies, patent prosecution, foreign filing, licensing, contracting, equity deals, federal government financing and reporting and any other supporting documentation related to invention and patent aspects, including invention disclosures and corresponding publications of Professor Chu, his colleagues and associates on the UH campus and elsewhere concerning high temperature superconductivity.

You state:

viewed most liberally, Mr. Roth's request involves four broadly-defined types or classes of information: (a) materials relating to patent applications and the prosecution thereof, communications with patent counsel, and supporting information; (b) materials relating to the organization and direction of superconductivity research in general, including the Texas Center for Superconductivity; (c) materials relating to the university's efforts to commercially exploit the results of superconductivity research; and (d) the vast collection of materials relating to scientific research in superconductivity.

You note that gathering and copying this material will be burdensome and ask whether you must submit all of the material in these four categories for review by this office.

In order to determine whether information is subject to a particular exception, this office ordinarily must review the information. Section 7(b) states that requested information "shall be supplied to the attorney general but shall not be disclosed until a final determination has been made." If documents are numerous and repetitive, a governmental body should submit representative samples. If, however, each document contains substantially different information, the governmental body must include copies of all of the documents or information. The fact that submitting copies for review may be burdensome does not relieve a governmental body of its responsibility under section 7(b) to submit documents for review. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976), cert. denied 430 U.S. 931 (1977) (cost or difficulty in complying with act does not determine the availability of information).

Nevertheless, we do not believe that you must view the request you received as liberally as you have. For purpose of the Open Records Act, the only relevant information you have described above falls within (a) and (c). You subsequently submitted representative samples of information in these categories.

Under the Open Records Act all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure.

You claim that sections 3(a)(1), 3(a)(3), 3(a)(4), 3(a)(7), and 3(a)(11) of the act protect this information from required disclosure. Additionally, you claim that section 51.911 of the Texas Education Code protects this information.

Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(1) incorporates specific statutes that protect information from public disclosure.

Section 51.911<sup>1</sup> of the Texas Education Code provides in part:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), 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

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is the proprietary information of a person, partnership, corporation, or federal

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1. There are three provisions of the Texas Education Code labelled section 51.911. Throughout this decision, "section 51.911" refers to the section added by chapter 818 of the 69th Legislature. See Acts 1985, 69th Leg., ch. 818, § 2.

agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties.

Subsection (1) of section 51.911 is relevant here.

The purpose of subsection (1) of section 51.911 is to protect the "actual or potential value" of technological and scientific information developed in whole or part at state institutions of higher education. Information related to superconductivity research at the University of Houston clearly falls within this provision. Most of the specific information requested falls within this provision and may, therefore, be withheld under section 3(a)(1) of the Open Records Act.

The requestor sought:

copies of all patent applications, patent searches, patent strategies, patent prosecution, foreign filing, licensing, contracting, equity deals, federal governmental financing and reporting and any other supporting documentation related to invention and patent aspects, including invention disclosures and corresponding publications of Professor Chu, his colleagues and associates on the UH campus and elsewhere concerning high temperature superconductivity.

Subsection (1) of section 51.911 protects "all technological and scientific information . . . that [has] a potential for being sold, traded, or licensed for a fee." Superconductivity patent applications and related documents clearly fall within this provision because they reveal vital information about the superconductivity research itself. On the other hand, basic information about licensing, contracting, equity deals, and federal governmental financing, if any, does not necessarily reveal details about the research itself. Release of contract and funding information that does not enable a person to appropriate the university's research efforts in superconductivity cannot be withheld under section 51.911 of the Education Code, nor have you indicated how other sections you have raised protect other specific information. Similarly, a list of

publications about superconductivity at the university cannot be withheld from further disclosure once they have been published. We have marked the three examples in the documents you submit of information that may not be withheld.

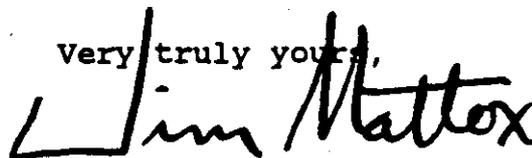
S U M M A R Y

Sections 4 and 5 of the Texas Open Records Act, article 6252-17a, V.T.C.S., do not require that a member of the public actually name the chief administrative officer of a governmental body in order to make a valid request for information under the act. A request is valid so long as it reasonably can be identified as a request for public records. Whether a particular request reasonably can be identified as such is a fact question that must be resolved on a case-by-case basis.

Section 7(b) of the Open Records Act requires governmental bodies to submit copies of documents to the attorney general for review to determine whether the documents are protected from disclosure. If the documents are voluminous, representative samples may be submitted. The fact that submitting copies may be burdensome, however, does not relieve a governmental body of its responsibility to submit them.

Section 3(a)(1) of the Open Records Act, in conjunction with section 51.911 of the Texas Education Code (as added by Acts 1985, 69th Leg., ch. 818, § 2) protects from disclosure information related to the commercial application or use of superconductivity research at the University of Houston.

Very truly yours,



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