



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

May 21, 1990

Mr. Pat Campbell  
Vice President and General  
Counsel  
Texas Tech University  
Health Sciences Center  
P.O. Box 4641  
Lubbock, Texas 79509-2021

Open Records Decision No. 557

Re: Whether the animal care and use committee of a public university is subject to the Open Records Act, article 6252-17a, V.T.C.S., and whether certain information relating to the committee is excepted from required public disclosure under sections 3(a)(1), 3(a)(3), or 3(a)(11) of the act (RQ-1934)

Dear Mr. Campbell:

Texas Tech University Health Sciences Center (hereinafter "the center") received two requests for information concerning its Institutional Animal Care and Use Committee (hereinafter "the Committee"). One request is for the names of all members of the committee. The other request is for minutes of all of the committee's meetings from October 1987 to the present; records of "all proceedings, deliberations, and actions" undertaken by the committee or any members of the committee from July 1989 to the present; and for any reports on animal facilities and programs for humane care and use of laboratory animals prepared by the Health Sciences Center pursuant to Public Health Service policy provision IV.B.3.

You assert that the committee is not required to conduct open meetings under the Open Meetings Act, article 6252-17, V.T.C.S., and on this premise argue that its minutes and records of proceedings are not subject to the Open Records Act.<sup>1</sup> Your argument was addressed in Open

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1. We are unaware of any judicial decision or Attorney  
(Footnote Continued)

Records Decision No. 491 (1988), which held that the Open Meetings Act and the Open Records Act are separate statutes the provisions of which must be construed separately, and that minutes of a meeting not subject to the Open Meetings Act were available under the Open Records Act. See Open Records Decision Nos. 495, 491 (1988). The committee is a governmental body within the Open Records Act; it is irrelevant whether it is also a governmental body within the Open Meetings Act. See Attorney General Opinions JM-116 (1983) (voluntary association of intercollegiate athletics not subject to Open Meetings Act is subject to Open Records Act); MW-295 (1981).

You contend that the minutes of the committee meetings (Attachment 2) and the records of all its proceedings (Attachment 4) are excepted from required public disclosure under section 3(a)(1) as information deemed confidential by statutory law, specifically article 51.914 of the Education Code, which provides for the confidentiality of:

- (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.

Article 51.914 protects commercially exploitable scientific or technological working data or work product. This office has held that article 51.914 [renumbered from former section 51.911 by Acts 1989, 71st Leg., ch. 2, § 16.01(13), eff. Aug 28, 1989] protects information that would permit a person to appropriate research or that directly reveals the substance of proposed research. Open Records Decision No. 497 (1988).

The committee meeting minutes consist of notations as to committee business and references to reports of subcommittees and various protocols submitted for committee

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(Footnote Continued)

General Opinion that has considered whether the committee is subject to the Open Meetings Act.

review and action.<sup>2</sup> The records of proceedings of the committee consist of memoranda to various researchers concerning committee action taken regarding their experiments. Some contain orders relating to facts about the experiments. Both the minutes and proceedings state titles of experiments and give some facts about steps of the experiments in which treatment of animals is an issue. The application of article 51.914 of the Education Code involves the resolution of fact questions, which cannot be accomplished in the opinion process.

As to the minutes of committee meetings (Attachment 2) and the records of the committee proceedings (Attachment 4), you have not shown that release of this would reveal information directly relating to the contents of the various protocols or experiments. Likewise, you have not demonstrated that minutes of the committee meetings or its proceedings constitute scientific or technological information that have a potential for being sold, licensed, or traded for a fee. Similarly, the working titles of experiments do not per se constitute technological or scientific information, nor do annotations in the committee minutes as to discussion of the various protocols constitute information of the kind protected by 51.914 because such information does not on its face reveal details of the research itself or allow a person to appropriate the research efforts of the university or its scientists. See Open Records Decision No. 497. However, it might be possible to demonstrate that release of such material is on its face protected from disclosure under section 3(a)(1) as information deemed confidential by law, specifically article 51.914 of the Education Code. You may submit to us within 30 days evidence that demonstrates that any of this material is protected by section 51.914 and therefore excepted from disclosure under section 3(a)(1).

You claim that section 3(a)(11) protects from required public disclosure the records of proceedings of the committee (Attachment 4) and the committee's reports of animal facilities (Attachment 5).

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent

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2. A protocol is the plan of a scientific experiment. Websters Ninth New Collegiate Dictionary 947 (Webster, Inc. 1983).

that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decision Nos. 464 (1987); 239 (1980). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986).

Whether section 3(a)(11) of the Open Records Act protects the various committee documents you submitted depends on the particular information, i.e. whether it consists of advice, opinion, or recommendation for use in the deliberative process. The committee's functions are to review the care and treatment of animals in research facilities in order to evaluate compliance with federal NIH guidelines, make reports of such reviews to the director of NIH, and make reports of violations of established federal guidelines that are observed during the review procedures and which have continued after notice, by the committee to the research entity. The committee is to review the institution's program for humane care and use of animals; inspect the institution's animal facilities; prepare reports of these reviews and inspections; review concerns involving the care and use of animals at the institution; make recommendations to the institutional official regarding any aspect of the institution's animal program, facilities, or personnel training; review and approve, require modifications in, or withhold approval of research activities related to the care and use of animals; review and approve, require modifications in, or withhold approval of changes regarding the use of animals in ongoing activities; suspend an activity previously approved if it is not being conducted in accordance with applicable provisions of the Animal Welfare Act, the federal guidelines, or the institution's assurance to the NIH. 54 Fed. Reg. 36152 (1989) (to be codified at 9 C.F.R. § 2.31(c)). Thus, the committee, acting as an agent for the university, performs several functions, including making findings of fact and recommendations. We have examined the documents and have marked the portions that consist of opinion, advice, and recommendation.

You also indicate that the request for "proceedings, deliberations, and actions" by individual members since a specified date is overbroad and vague, as this information appears to relate to the activities of the ten individual members. If it relates to records, deliberations, or actions of the committee, these are not maintained by individual members. You may ask the requestor to clarify this aspect of his request. Open Records Decision No. 87 (1975).

You also contend that the names of the committee members should be withheld, and deleted from the minutes should they be found otherwise not excepted from disclosure, because of the potential for harassment against them from various organizations. In support of this contention, you submitted to this office numerous letters addressed to the chairman of the committee, to a researcher, and to the president of the university. The letters express various degrees of disapproval of certain research done with animals at the university. Some threaten violence against a particular named professor whose work was the subject of media attention. You claim that the names of all the committee members are protected from disclosure under section 3(a)(1) as information protected by a constitutional right of privacy, in that disclosure of their names would constitute an infringement of the members' constitutional right of free association. We disagree.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The constitutional protection of a right of freedom of association protects individuals from government interference with individuals' due process rights to freely associate with other persons. The right protects individuals from state compelled disclosure of membership in private organizations. It does not protect the identities of individuals performing services for the government. See generally NAACP v. Alabama 357 U.S. 449 (1958). The constitutional right to freedom of association is not compromised by disclosure of the names of members of a publicly funded committee. Moreover, section 6(2) of the act makes the names of all employees of governmental bodies public. See also Open Records Decision Nos. 342 (1982); 165 (1977).

Finally, you claim that the names of the committee members are excepted from disclosure by section 3(a)(3) of the act. Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure:

information relating to litigation of a civil or criminal nature and settlement negotiations, to which the state or a 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.

You contend that section 3(a)(3) excepts the names of committee members from required disclosure because the university is investigating the possibility of bringing harassment and/or conspiracy charges against individuals who have identified themselves as members of a certain animal rights group and who have made threatening phone calls or written threatening letters to the center representatives.

In order to withhold information under section 3(a)(3), the information must relate to pending or reasonably anticipated litigation. See Open Records Decision No. 416 (1984). While the university may contemplate bringing action against persons engaging in harassment or conspiracy, it has not yet done so. Civil litigation is thus neither pending nor reasonably anticipated. Thus the names of committee members are not excepted from disclosure under section 3(a)(3). They must therefore be released. \*

#### S U M M A R Y

The animal care and use committee of a public university, funded with public funds, is a governmental body under section 2(1)(A) of the Open Records Act, article 6252-17a, V.T.C.S. Minutes of committee meetings and records of committee proceedings are not on their face protected from disclosure by article 51.914 of the Education Code, but you may submit evidence to the contrary within 30 days.

Records of committee proceedings and committee reports concerning facilities are protected under section 3(a)(11) only to the extent they contain opinion, advice, or recommendation. The names of committee members are not protected from disclosure by a constitutional right of privacy as incorporated into section 3(a)(1); nor are they protected from disclosure under section 3(a)(3) of the act.

Very truly yours,



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