



UNIVERSITY OF HOUSTON SYSTEM
UNIVERSITY OF HOUSTON

Office of the General Counsel

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September 29, 2015

VIA EMAIL (jeff@intelligentpharmallc.com)

Jeff Gardner
Intelligent Pharmia LLC
134 Spring Street – Suite 304
New York, New York 10012

Re: Texas Public Information Act Request dated and received August 21, 2015

Dear Mr. Gardner:

This letter is in response to your Texas Public Information Act request dated August 21, 2015, a copy of which is enclosed. I enclose a redacted copy of a letter I sent to the Texas Attorney General requesting a decision regarding whether certain information responsive to your request is within an exception to public disclosure.

Please be advised that because third party proprietary interests have been implicated by your request, we have informed the interested third party that they have the right to present a legal argument to the Attorney General's Office should they wish to prevent the public release of their information. A copy of the correspondence between the University and the third party is enclosed.

Under the Texas Public Information Act, the Office of the Attorney General has 45 working days in which to issue a decision regarding the University of Houston's request to protect documents. When our office receives a response from the Office of the Attorney General, then we will comply with the Attorney General's instructions regarding whether to provide you with responsive documents.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth E. Shapiro", written over a horizontal line.

Ruth E. Shapiro

Enc.



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September 29, 2015

Via Overnight Courier

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Re: Public Information Act Request from Jeff Gardner (Intellectual Pharma) dated August 21, 2015 and clarified September 15, 2015

Dear Attorney General Paxton:

The University of Houston (the "University") requests an Attorney General opinion concerning whether certain information is subject to public disclosure under Chapter 552 of the Texas Government Code (the "Act"). On August 21, 2015, the University received a request under the Act from Mr. Gardner seeking:

- a copy of all instances in which the following thesis referred to by call number "Thesis 540 1987.L43" or "540 1987.L43" or the title "2-substituted-2-acetamido- N-benzylacetamides : synthesis, spectroscopic and anticonvulsant properties" which was completed in 1987 by Philippe Le Gall has been checked out of the University of Houston's collection. The work in question can be found in the University of Houston library at the following link: <http://library.uh.edu/record=b1852080~S11>
- a copy of all instances in which the following thesis referred to by call number "Thesis 540 1995.C56" or "540 1995.C56" or the title "Synthesis, chemistry, and biological evaluation of medicinally relevant compounds" which was completed in 1995 by Daeock Choi has been checked out of the University of Houston's collection. The work in question can be found in the University of Houston library at the following link: <http://library.uh.edu/record=b2482376~S11>

A copy of the request is enclosed as **Exhibit 1**.

Ezekiel W. Cullen Building - 4302 University¹ Drive, Room 311 - Houston, TX 77204-2028
832.842.0949 - Fax: 713.743.9179

On September 1, 2015, the University submitted a request for clarification/narrowing to Mr. Gardner. Mr. Gardner narrowed the request on September 15, 2015 to permit a spread sheet of the dates the requested Le Gall and Choi thesis was checked out. The University's request for clarification and Mr. Gardner's response are attached as **Exhibits 2 and 3** respectively.

The University believes information responsive to Mr. Gardner's request is excepted from public disclosure by Texas Government Code § § 552.103 (litigation exception), and §§ 552.104 and 110 (competitive harm). the responsive information is enclosed as **Exhibit 4**. The University seeks an opinion to withhold that information based upon the above cited provisions.

Factual Background Relating to Mr. Gardner's Request

This request is one of six that the University of Houston has already received from Mr. Gardner seeking information dating back to the 1980's regarding whether and to what extent certain treatises/dissertations may have been accessed or available. Copies of the various public information act requests were attached as Exhibits to the University's prior two requests for opinions. Mr. Gardner's public information act requests are remarkably similar in scope to subpoenas issued upon the University in Fall 2014 in underlying patent litigation.

The Underlying Litigation

The underlying litigation, styled *UCB Inc. v. Accord Healthcare, Inc.*, C.A. No. 13-1206 (LPS) (Consolidated) (D. Del., Stark, J.)¹ involves the infringement and validity of a patent covering the active ingredient of Vimpat®, a highly effective and widely used drug for the treatment of epilepsy. After years of experimentation and work, Dr. Harold Kohn invented this drug in his laboratory at the University of Houston and a patent application was filed that eventually led to U.S. Reissue Patent No. RE38,551 (the "551 Patent"), which is the subject of the Delaware litigation. The underlying litigation is scheduled for trial in November 2015.

¹ Twelve separate actions brought by Plaintiffs UCB, Inc., UCB Biopharma SPRL, Research Corporation Technologies and Harris FRC Corporation were consolidated into a single case in Delaware. The attached complaint against Mylan Pharmaceuticals, Inc., and Mylan, Inc. is an example.

University during the litigation were produced pursuant to a Protective Order between the parties to the litigation and specifically marked confidential, as noted in Exhibit 6.

The Subpoenas Issued Upon the University

Defendants in the patent case first subpoenaed documents and testimony from the University 2014.

I. Third Party Interests

The requested policy implicates third party interests and should be withheld to allow the interested third parties an opportunity to submit in writing to your office the reasons why the information should be withheld. Pursuant to § 552.305 of the Texas Government Code, the University notified the interested parties of this request for an attorney general decision, and sent the “notice statement to persons whose proprietary information is requested” to them. The interested parties were informed they are entitled to submit a letter to your office within 10 business days, which provides why the information should be withheld. A copy of the notice is enclosed as **Exhibit 5**.

II. Competitive Harm

Section 552.104 of the Texas Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of Section 552.104 is to protect the government’s interests when it is involved in certain commercial transactions. A governmental body may withhold information under Section 552.104(a) when it has specific commercial/marketplace interests and the possibilities of specific harm to those interests from the release of the requested information. Open Records Decision No. 593 (1991).

University
will be lost or severely diminished
information being produced.

The
and the revenue stream
as a result of the requested

As explained above, releasing the dates when each thesis was checked out of the University library would cause the University competitive harm and therefore should be withheld from production under Texas Govt. Code §§ 552.104 as well as Section 552.110. Producing information could affect the University's

It is critical that this information be withheld in order to protect the University from competitive interests, namely pharmaceutical interests, currently seeking or seeking in the future

IV. Documents Confidential by Law and under Litigation Exception

The University believes the information included in Exhibit 2 is also excepted from public disclosure by Texas Government Code § 552.101 (confidential under other law) and §552.103 (litigation exception), as further explained below.

Sections 552.103 - Litigation Exception

Texas Government Code §552.103 provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil...nature...to which the state or public subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(b) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of information.

The University understands that in order to establish the applicability of § 552.103, it must provide relevant facts and documents to demonstrate that: (1) litigation was pending or reasonably anticipated on the date it received Mr. Gardner's request for information; and (2) the

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