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January 22, 2010

VIA ELECTRONIC & U.S. MAIL

Paula K. DeAngelo, Esq.
Office of University Counsel
3550 Beardshear Hall
Ames, IA 50011-2045

Re: Public Records Request

Dear Ms. DeAngelo:

I write in response to your letter of January 21, 2010 to Patti Waller informing her that a Petition for Injunction had been filed that related our request for public records. In your letter you stated that approximately 1,650 documents had been gathered in response to our request, but that you would withhold the documents until you receive "further direction from the court." Your letter then goes on to ask whether we "wish to intervene in this action or withdraw [our] public records request." But, before we can inform you what we wish to do, we need clarification of the University's position on this matter, as well as some additional information regarding the subject documents.

First, as to the University's position, it is unclear whether it agrees that the records we seek are all exempt from disclosure as confidential trade secrets, Iowa Code § 22.7(3), or as of the proprietary information of Beef Products, Inc. (BPI). Just because BPI filed a Petition claiming that some records we seek contain trade secrets, or relate to work that Dr. Dickson did as an "independent contractor," that does not mean there is a reasonable basis for refusing to disclose the already-gathered documents. We are also troubled by the fact of Dr. Dickson having published an article in the Journal of Food Protection that extensively discusses allegedly "confidential" research on behalf of BPI, that the research was also supported by Hatch Act and State of Iowa funds, and that his consulting work for BPI would have needed approval by the University to avoid conflicts of interest. It therefore appears that the University is in a much superior position to determine whether BPI's trade secret claims are valid.

Second, Iowa courts have consistently have interpreted the “public records law to impose a presumption in favor of disclosure and to give a narrow interpretation to statutory exemptions from disclosure. Disclosure is favored over non-disclosure, and exemptions from disclosure are to be strictly construed and granted sparingly.” *U.S. West Commun., Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 713 (1993) (quotations omitted). Moreover, it is unlawful to “cause any such right [under the public records law] to be denied or refused.” Iowa Code § 22.6. Accordingly, we do not believe that it is our responsibility to intervene in an action filed against the University to make the arguments that only the University is in sufficient position to make. Indeed, if the University allows a default judgment to be entered, and an injunction to issue, when it knows that BPI is not otherwise entitled to such relief, then the University’s failure to act could be construed as causing the denial of rights under the public records law.

Finally, even if it falls upon us to oppose the BPI’s Petition, we cannot hope to do so successfully unless the University first discloses all records related to: Dr. Dickson’s consulting work for BPI; how such work was approved and monitored; disclosure of any conflicts of interest; whether federal, USDA, or Iowa state funds were used to support the work; other grants sponsored or funded by BPI at the University; research notes, data, article-drafts, related papers, and other documents that relate to Dr. Dickson’s Research Note published in the 2003 *Journal of Food Protection*, vol. 66, pages 847-877. We, thus, ask that you treat this as an amendment to our prior public records request.

In light of the foregoing, we are not at present withdrawing our request for public records, nor conceding that the University’s obligations under the public records law will be met by the suggestion that we intervene to oppose BPI’s Petition for Injunction.

Very Truly Yours,



William D. Marler