

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

Beef Products, Inc., and BPI Technology,
Inc.,

Plaintiffs,

v.

Iowa State University of Science and
Technology,

Defendant.

Case No. EQCV045745

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The civil equity action was previously tried to the court. The Plaintiffs (referred to collectively as “BPI”) were represented by attorneys John M. Bickel and Brett D. Papendick of Cedar Rapids, Iowa. The Defendant (“ISU”) was represented by Assistant Iowa Attorney General Diane M. Stahle. The court must now render its decision. The court apologizes for the delay in this ruling.

FINDINGS OF FACT and CONCLUSIONS OF LAW

In approximately 2002, BPI, a Nebraska corporation engaged primarily in the business of meat processing, engaged Dr. James S. Dickson, a food microbiologist and tenured professor at ISU, to consult on food safety issues. Faculty members at ISU are allowed to do private consulting work outside their university employment. Dr. Dickson’s consulting work for BPI was conducted in his private consulting capacity and not on behalf of ISU. He conducted all of his consulting work in compliance with applicable university regulations and policies. Dr. Dickson used ISU’s Food Safety Research Lab to conduct certain tests connected with his consulting work for BPI.

In late 2009 and early 2010, a Seattle, Washington, law firm asked ISU to allow its access to records that “pertain to James S. Dickson, PhD (‘Dr. Dickson’) and Beef

Products Incorporated ('BPI') or BPI Technology Incorporated ('BPI Technology')."

More specifically, the law firm sought the following:

- All communications between Dr. Dickson and BPI or BPI Technology and their agents;
- Copies of all reports, grant proposals, consulting agreements, test results, notebooks, and lab books that contain results of studies conducted on BPI or BPI Technology products, processes, and raw materials;
- Copies of all interim reports, notes, memos, or progress reports pertaining to all projects and studies related to BPI or BPI Technology;
- Copies of all interim reports, notes, memos, or progress reports pertaining to all projects and studies related to IBP; and
- Copies of all interim reports, notes, memos, or progress reports pertaining to all projects and studies related to Tyson products.

The law firm also requested:

"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 related to Dr. Dickson's Research Note published in the 2003 Journal of Food Protection, vol. 66, pages 847-877."

The *New York Times* eventually requested the same information as the Seattle law firm.

Before ISU released any of the requested information, BPI filed this action to enjoin its release.¹

Are the Requested Documents Public Records? ISU and Dr. Dickson have possession of various documents generated during Dr. Dickson's consulting relationship with BPI. The provisions of the Iowa Open Records law, Iowa Code chapter 22, are implicated in deciding whether all or part of those documents should be released to third parties. That statute establishes a liberal policy of public access from which departures are to be made only in discrete circumstances. *Head v. Colloton*, 331 N.W.2d 870, 874

¹ Prior to his being retained by BPI as a consultant, Dr. Dickson published an article in a professional journal relating to food safety. ISU has previously released documents relating to that article. Those documents are not at issue in this action.

(Iowa 1983). Section 22.2(1) provides that, as a general rule, every person “shall have the right to examine and copy a “public record.” The threshold question in this case is whether any of the requested documents constitutes a “public record,” as defined by Iowa Code section 22.1(3)(a):

“*Public records* includes all records, documents, tape or other information, stored or preserved in any medium, *of or belong to* this state or any county, city, township, school corporation, political subdivision, . . . or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.” (Emphasis added.)

A document “of” the government is one that was produced by or originated from the government. Documents “belong to” the government include those that originate from other sources, but are held by public officers in their official capacity. *City of Dubuque v. Dubuque Racing Association, Ltd.*, 420 N.W.2d 450, 452 (Iowa 1998). See also, *Howard v. Des Moines Register & Tribune Co.*, 283 N.W.2d 289, 299 (Iowa 1979), cert. denied, 445 U.S. 904 (1980) (public records statute authorizes access to writings held by public officials, regardless of origin). The requested documents in this case can be categorized as (a) results of testing performed at the ISU Food Safety Research Lab for BPI, (b) e-mails between Dr. Dickson and BPI concerning the testing process, and (c) invoices to BPI for the testing services at ISU. The test results constitute public records in that they constitute information which was produced or originated by the government (ISU’s testing laboratory). The invoices for the testing services by ISU share the same characteristics and are public records. The e-mails between Dr. Dickson and BPI are also public records. Although the e-mails may have been produced or originated by Dr. Dickson in his individual capacity as a private consultant to BPI, rather than as an official of the university, the e-mails, apparently, have been held by ISU in its official capacity. Such makes them public records.

Are the Requested Documents Confidential Documents? Even when documents qualify as “public records,” their release to the public is generally prohibited if they also constitute “confidential” records, as described in Iowa Code section 22.7. The specific exemptions from public disclosure listed in section 22.7 are to be construed narrowly. *Head v. Colloton*, 331 N.W.2d at 874. Among “confidential” documents are those divulging “trade secrets which are recognized and protected as such by law.” Iowa Code section 22.7(3). BPI asserts that the requested documents fall into this category. A *trade secret* “means information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process that . . . (a) [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use [and] (b) [i]s the subject of efforts that are reasonable under the circumstances to maintain secrecy.” Iowa Code section 550.2(4). See also, *U.S. West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714 (Iowa 1994); and *Brown v. Iowa Legislative Council*, 490 N.W.2d 551, 554 (Iowa 1992) (applying the definition of “trade secret” in Iowa Code section 550.2(4) to actions under Iowa Code chapter 22). The burden is upon BPI to demonstrate that the requested documents divulge “trade secrets” and, accordingly, should be exempt from disclosure as “confidential” documents under section 22.7(3).

Richard Jochum, BPI’s vice president and general counsel, testified that BPI retained Dr. Dickson as a “private consultant” for research and development purposes several years ago. Dr. Dickson signed a “non-disclosure” agreement with BPI agreeing to keep information about BPI’s business and processes confidential. When Dr. Dickson traveled to BPI’s plants, he was required to sign documents promising that he

would not divulge to third parties any information he gained during his visits. The business in which BPI is engaged is extraordinarily competitive. BPI has developed certain food-processing methods which only it uses. Some of those methods are patented and others are not. BPI made the decision not to seek patents on certain methods out of concern that its competitors would use the patent information to develop similar processes. Competitors have been quite aggressive in seeking information about BPI's methods. Some have even tried to hire Dr. Dickson. The documents from the Food Safety Research Laboratory showing test results contain information which, if examined by knowledgeable people employed by BPI's competitors, could result in disclosure of confidential information about BPI's existing food-processing methods and its development of new methods. The e-mail exchanges between Dr. Dickson and BPI relate to the test results. Some of the invoices from the laboratory, likewise, contain information that, although cryptic to the casual observer, could be used by competitors to steal BPI's trade secrets. The court concludes that, except for certain invoices which show only the dollar amounts billed to BPI by ISU, the requested documents constitute "confidential" records under Iowa Code section 22.7(3). Such conclusion shields disclosure of the documents under section 22.7, unless a statute or rule outside of chapter 22 gives a party a specific right of access superior to that of the public generally. *Head v. Colloton*, 331 N.W.2d at 876. No such statute or rule exists in this case.

Does Iowa Code Section 22.8, in Any Event, Support an Injunction?

Regardless of whether the requested documents are "confidential" under section 22.7, their disclosure may be enjoined under the circumstances described in Iowa Code section 22.8. *Gabrilson v. Flynn*, 554 N.W.2d 267, 274 (Iowa 1996). Section 22.8(1)

provides as follows:

“The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records. . . . Such an injunction may be issued only if the petition supported by affidavit shows and if the court finds both of the following:

- a. That the examination would clearly not be in the public interest.
- b. That the examination would substantially and irreparably injure any person or persons.”

In determining whether an injunction should issue, the court must “take into account the policy of [Iowa Code chapter 22] that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others.” Iowa Code section 22.8(3).

BPI must demonstrate its entitlement to the requested injunction by clear and convincing evidence. *Id.* BPI has carried that burden of proof.

Regarding whether the examination of the requested documents would be in the public interest, the Iowa Open Records law serves the public interest by “open[ing] the doors of government to public scrutiny – to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.” *Northeast Council on Substance Abuse, Inc. v. Iowa Dept. of Public Health*, 513 N.W.2d 757, 759 (Iowa 1994). This case does not involve ISU’s making governmental decisions on behalf of the public. Rather, it involves the university’s providing laboratory testing services for a fee to a private entity. That private entity contemplated that the results from, and information relating to, those testing services would not be available to the general public. This is not unusual. ISU has more than 100 groups that provide laboratory and other services to the private sector for a fee. Those groups produce significant revenue for that public university. Little public money is used to support the research laboratories at ISU. The laboratories and other facilities provide valuable

educational opportunities for the university's students. While the public interest is served by disclosure of general information about the laboratory testing services offered to the private sector by ISU, such as the nature of the services, the number of state employees involved in the services, the expenditure of public funds on the laboratories and the amount of revenue generated by the laboratories, it would not be served by disclosing the specific results of tests provided to a particular entity. Rejecting the request for an injunction under section 22.8 in this case could lead to a significant reduction in the use of ISU's laboratory services by the private sector and thereby jeopardize the financial viability of the laboratories. It would also result in irreparable harm to BPI by disclosure of sensitive proprietary information relating to BPI's business. The court concludes that, except with regard to certain invoices showing only the amounts billed to BPI by ISU, the disclosure of the requested documents should be enjoined under section 22.8.

ORDER

IT IS, THEREFORE, THE ORDER OF THE COURT as follows:

1. The Plaintiffs' Petition for Injunction is granted, as described below.
2. Defendant Iowa State University of Science and Technology is hereby permanently enjoined from disclosing documents to the general public showing the results of tests performed by the university for BPI and the e-mails relating to the testing and test results.² ISU is further permanently enjoined from so disclosing any invoices issued by the university to BPI for services rendered, unless all information on those invoices describing the particular laboratory services rendered or materials used is redacted, so that the only information shown is the date and dollar amount of the

² These documents are identified on the compact disc reviewed by the court as nos. 1-21, 28-54, 67-770, 774-963, 1014, 1016-1020, 1022-1474, 1479-1650, and 1679-1749.

invoice.³ As allowed by Iowa Code section 22.8(2), this injunction shall be effective without the posting of a bond. This order shall constitute a writ of injunction. The Clerk of Court need not issue a separate writ.

3. The court costs of this action are taxed against the Plaintiffs.

³ The invoices identified as document nos. 1681-1683, 1686, 1692, 1695, 1697, 1698, 1700, 1701, 1703, 1704, 1707-1709, 1711, 1713, 1714, 1716-1719, 1721-1725, 1730-1732, 1734-1743, 1748, and 1749 on the compact disc reviewed by the court in camera are subject to the redaction requirement. Because all other invoices shown on the compact disc contain only dollar amounts, those invoices may be released to the general public without any redaction.



State of Iowa Courts

Type: OTHER ORDER

Case Number EQCV045745
Case Title BEEF PRODUCTS INC & BPI TECHNOLOGY VS IOWA STATE UNIVERSITY

So Ordered

A handwritten signature in black ink that reads "Dale E. Ruigh". The signature is written in a cursive style and is positioned above a horizontal line.

Dale E. Ruigh, District Court Judge
Second Judicial District of Iowa