

Duke University

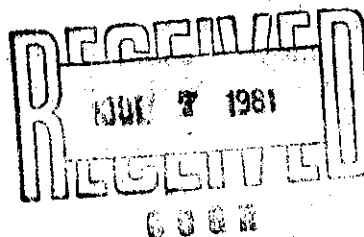
DURHAM
NORTH CAROLINA
27706

July 1, 1981

OFFICE OF PATENT ADMINISTRATION
614 CHAPEL DRIVE ANNEX

TELEPHONE (919) 684-2846

Mr. Joseph Keyes
Association of American Medical Colleges
Suite 200
1 DuPont Circle N.W.
Washington, D.C. 20036



Re: Reverse Freedom of Information Act and S-1247

Dear Joe,

In accordance with our telephone discussions of June 30, 1981, this is written to apprise you of our comments on the referenced Senate Bill by Senator Dole as it relates specifically to the draft Bill Bob Gellman helped us prepare on the same subject. I understand that Milt Goldberg has forwarded to you a copy of that draft Bill, which might make the following comments a little easier to follow.

- 1) S-1247 does not provide for the submitter to indicate ahead of time which material is confidential. Instead of this the submitter is notified when there has been a request for "records which contain or are based on information not already in the public domain which has been obtained from any private source or which concerns any individually identified party. . .". Thus, the agency is apparently the party which determines whether or not the information is in the public domain, and evidently the researcher has no say or knowledge that this judgment is being made. He obviously can't then know whether the agency was right in assuming what material was in the public domain verses what was not. Also, of critical importance is the fact that the definition of "private source" in (7)(A)(ii) of S-1247 excludes public employees, which would effectively exclude employees of the public universities.
- 2) One of the main concerns we tried to address in the draft Bill was the subject of funded and unfunded proposals in the hands of the various agencies. The language of S-1247 doesn't refer to funded or unfunded proposals, and uses in lieu thereof "records". It would certainly help our cause if some language could be included that explicitly refers to unfunded proposals, (which we consider to be the property of the submitter), and funded proposals where disclosure of certain portions of the proposal could damage the submitter's patent rights.
- 3) The trade secrets exemption added by S-1247 (C) states "proprietary information which would not customarily be disclosed to the public by the person from whom it was obtained", and of course this brings us right back to the court cases that indicate a researcher for a university or a non-profit organization cannot have any proprietary information, since they are not a "business".

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I understand that hearings on this Bill will be held on July 15th and July 22nd, and that Dr. Bondurant has been asked to testify on our behalf, we are very pleased with this and, since he is so close, if I can be of any help by meeting with him, please don't hesitate to let me know. We certainly hope that these comments will be included in the testimony, and appreciate very much your willingness to help us with the problem.

Thanks again, and if I can be of any help, please let me know.

Sincerely,

Carl B. Wooten
Director

CBW:tc

cc: ✓ Mr. Milton Goldberg
Mr. Eugene J. McDonald
Ms. Lucy Knight