



Office of the University Custodian of Records
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June 13, 2012

Via E-mail Only
Edward Hammond
3103 Powell Circle
Austin, TX 78704
ehpricklyresearch.com

OPEN PUBLIC RECORDS ACT REQUEST # 1288

Dear Mr. Hammond:

Please accept this letter as the University Custodian's response to your request for records pursuant to the Open Public Records Act ("OPRA"). On May 16, 2012, this office received your request for the following:

1. All "Do's and Don'ts" provided to growers, collectors and industry as referenced in the attached Rutgers record "Agreement on Benefit Sharing Policy Related to African and International Inventions" (hereinafter "Policy Agreement").
2. All product specification sheets given to African producers, as referenced in the Policy Agreement.
3. All licenses to rights to commercialize an invention, as referenced in the Policy Agreement.
4. The complete final text of all benefit sharing policy terms inserted into all licensing agreements, as set forth in the Policy Agreement.
5. All benefit sharing plans developed with Rutgers, as set forth in the Policy Agreement.
6. All lists and other information provided to Rutgers, as set forth in the penultimate paragraph of the Policy Agreement.
7. All benefit sharing agreements executed in relation to any aspect of the NUANPP program, including but not limited to licenses to intellectual property claimed by Rutgers University and/or its employees.

Via e-mail dated May 25, 2012, I explained that the employee with knowledge of the records you seek access to was out of the country until May 31, 2012, and requested an extension until June 13, 2012 to respond to your request.

This office has searched for records responsive to your request and now responds as follows:

Item 1

You requested “all ‘Do’s and Don’ts’ provided to growers, collectors and industry referenced in the attached Rutgers record ‘Agreement on Benefit Sharing Policy Related to African and International Inventions’ (hereinafter ‘Policy Agreement’).” The following records are responsive to your request and are being provided with this letter, via e-mail as requested:

1. Birds Eye Chilli Dos and Donts
2. Griffonia Dos and Donts
3. Paprika Dos and Donts
4. Voacanga Dos and Donts

Item 2

You requested “all product specification sheets given to African producers, as referenced in the Policy Agreement.” On June 7, 2012, I advised you via e-mail that this request was overly broad and asked you to clarify your request by species. On that same date, you refused to clarify your request. By e-mail dated June 8, 2012, you requested a list of product specification sheets.

The Department of Plant Biology and Pathology has advised this office that a list of product specification sheets does not exist. OPRA provides access to existing identifiable records and an agency does not have to create a record in order to respond to an OPRA request. N.J.S.A. 47:1A-1.1, et seq. As explained in my e-mail dated June 7, 2012, an employee of the Department of Plant Biology and Pathology must conduct research by reviewing each file to determine if product specification sheets exist for that species. While the request remains overly broad, we are willing to conduct a reasonable search for responsive records.

Pursuant to N.J.S.A. 47:1A-5c, an agency is authorized to impose a special service charge where the agency must make an extraordinary expenditure of time and effort to accommodate a request to inspect government records. The special services fee shall be based on the actual direct cost of providing the records. Id. The University estimates it will take an employee 3 hours, at the rate of \$39.31 per hour, to respond to your request, for a total special services fee of \$117.93¹ Please be advised the requestor may incur additional charges for extraordinary time and expense with any additional time involved with the processing of this request.

You must pay the estimated special services fee prior to the search being completed. You may send a check in the amount of \$117.93 payable to “Rutgers University” to the following address:

Kimberlee M. Pastva, Compliance Associate
Office of the Secretary
Rutgers, The State University of New Jersey
7 College Avenue

¹ The special services fee is based upon the hourly rate of the employee performing the work and therefore represents the actual cost to the University to provide the requested records.

New Brunswick, New Jersey 08901-1260

Once payment is received, the search will be completed and the records released to you via e-mail, as requested.

Item 3

You requested “all licenses to rights to commercialize an invention, as referenced in the Policy Agreement.” The following records respond to your request and are being provided to you with this letter, via e-mail as requested:

1. Bioresources License 07-052
2. Bioresources Assignment of Rights to Rutgers 1-30-11

The Department of Plant Biology and Pathology advised this office that because Bioresources International failed to perform its obligations under the license agreement, the license agreement was terminated. The invention was never commercialized, and the rights have been re-assigned to the University.

Item 4

You requested “the complete final text of all benefit sharing policy terms inserted into all licensing agreements, as set forth in the Policy Agreement.” As stated in response to Item 3, above, the Department of Plant Biology and Pathology had one license to commercialize an invention. Benefit sharing language is present in that license agreement:

1. Bioresources License 07-052

Item 5

You requested “all benefit sharing plans developed with Rutgers, as set forth in the Policy Agreement.” As stated in response to Item 3, above, the Department of Plant Biology and Pathology had one license to commercialize an invention and thus one record with benefit sharing language:

1. Bioresources License 07-052

Item 6

You requested “all lists and other information provided to Rutgers, as set forth in the penultimate paragraph of the Policy Agreement.” As stated above in response to Item 3, the Department of Plant Biology and Pathology had only had one license to commercialize an invention. Because that invention was not commercialized, records responsive to this item of your request do not exist. OPRA provides access to existing, identifiable records. Because responsive records do not exist, your request is denied.

Item 7

You requested “all benefit sharing agreements executed in relation to any aspect of the NUAPP program, including, but not limited to licenses to all intellectual property claimed by Rutgers University and/or its employees.” As stated in response to Items 4 and 5, above, one record responds to your request:

1. Bioresources License 07-052

The Bioresources License contains benefit sharing language. The Department and Plant Biology has advised this office that the “Agreement on Benefit Sharing Policy” was created to aid the commercialization of plants in developing countries, such as sub-Sahara Africa. NUAPP intends to incorporate its “Agreement on Benefit Sharing Policy” in licenses to commercialize inventions. However, to date there have been no benefit sharing agreements signed and licensed. Accordingly, executed benefit sharing agreements do not exist.

If your request has been denied, you may take your appeal to the Government Records Council which has mediation and dispute resolution procedures or you may file a lawsuit with the New Jersey Superior Court, as provided by N.J.S.A. 47:1A-1, et seq. A brochure listing the procedures for appeal is being provided to you with this letter.

Very truly yours,



Kimberlee M. Pastva
Compliance Associate
848-932-2457