

Testimony of Lori Kettler, Esq. in Opposition to Language in H 757 Pertaining to Public Records About the Care and Use of Live Animals in Experiments at the University of Vermont and State Colleges

**Before the House Committee on Government Operations
February 27, 2014**

Thank you for this opportunity to address the Committee. My name is Lori Kettler. I am an alumna of Vermont Law School, a long-standing member of the VT bar, and a resident of Burlington. I am a public interest lawyer with 16 years experience with open government issues, and public records acts in particular.

This testimony is submitted in opposition to the proposed language in H 757 that pertains to public access to records about the care and use of live animals in experiments at the University of Vermont and State Colleges. My testimony addresses two concerns:

- The proposed language, *in practical application*, would continue to prevent public access to almost all records that pertain to animals used in experiments, and thus fails to provide any real measure of transparency; and
- The proposed language would maintain Vermont's status as one of only several states which do not release animal use protocols pertaining to experiments conducted with taxpayer dollars at state educational institutions. My testimony on this facet addresses how other states approach the issue in public records acts, and do so without jeopardizing intellectual property rights or research dollars.

I. Summary of they types of records produced in conjunction with experiments on live animals.

In order to understand this issue it is important to understand the types of records at the heart of this debate. Citizens concerned about the care and use of live animals in research generally request three categories of records: research protocols (sometimes referred to as animal use protocols), routine animal care records (e.g., daily care logs and veterinary medical records); and internal complaints or reports about animal welfare concerns. Typically, none of these records contain information that could provide an advantage to a competitor and thus be deemed proprietary in nature.

An animal use protocol is a document prepared by a researcher or instructor who proposes to use live animals in a project. The protocol is submitted to an internal federally-mandated committee for review and approval. The protocol sets forth basic information about how the care and use of the animals will conform to the mandates of the federal Animal Welfare Act – that is the sole purpose of the protocol. As a result, the protocol includes information such as the species and number of animals that will be used, whether alternatives to the use of live animals have been considered, the level of pain the animal will experience and whether analgesics will be administered, what

happens to the animal at the end of the experiment, and similar information. UVM's protocol form is discussed in detail below.

- II. The proposed language, in practical application, would continue to prevent public access to almost all records that pertain to animals used in experiments.

H 757 provides, in relevant part:

This subdivision applies to research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, *protocols*, and the identities of or any personally identifiable information about participants in research. This subdivision shall not apply to records, *other than research protocols, produced or acquired by an institutional animal care and use committee* regarding the committee's compliance with state law or federal law regarding or regulating animal care. (Emphasis added.)

The language of the bill fails to achieve transparency in the following ways:

1. The bill maintains the current exemption for "protocols" and "research protocols", and thus would appear to exempt animal use protocols. This approach ignores existing exemptions in the public records act that would protect information of commercial value such as hypotheses, and personal information such as e-mail addresses, from public disclosure, while allowing the public access to basic information about how animals are used in publicly-funded experiments. (Further, animal use protocols are never published or released by the institutions, so the fact that the bill requires their disclosure under those circumstances has no practical application.)
2. With regard to animal care records (e.g., cage cards), veterinary records, and similar records, the institutional animal care and use committee (IACUC) does not "produce" such records nor will it normally "acquire" them. These records are produced and maintained in the laboratories. As such, the University of Vermont and the state colleges will not be required to release these records to the public under the proposed language.
3. The records that must be released under the proposed language are those that pertain to the IACUC's compliance with state or federal law, as opposed to the researchers' or laboratories' compliance with state or federal law. That leaves open to interpretation exactly which records will be required to be released under the proposed language, even if one ignores the barriers set forth above;
4. Further, who will define which records pertain to compliance with "state law or federal law regarding or regulating animal care"? Again, this leaves open to interpretation exactly which records will be required to be released under the proposed language. Of additional concern, the vast majority of animals used in research at UVM, for example, are mice and rats and those species are

expressly exempt from the minimal protections of the federal Animals Welfare Act.

Thus, the language of H 757 fails to provide transparency with regard to the care and use of animals in experiments at state institutions, and also is fraught with ambiguity.

I suggest to the Committee that the flaws in H 757 can be remedied by replacing the proposed language with the following text from S 127, introduced by Senators Ashe, Baruth, Pollina, and Zuckerman:

This subdivision (c)(23) shall not apply to records produced or acquired by the University of Vermont or the Vermont State Colleges regarding animal care or compliance with state law or federal law regarding or regulating animal care, including the following records, which shall be subject to inspection and copying: institutional animal care and use committee meeting minutes and reports, animal use protocols and amendments, animal care records, animal use records, and animal acquisition and disposition records.

III. Little to no information contained in research records requested by citizens can be characterized as proprietary

Citizens across the country who are concerned about the care and use of animals in experiments most often request access to animal use protocols, routine animal care records (e.g., daily care logs and veterinary medical records); and internal complaints or reports about animal welfare concerns. Typically, none of these records contain information that could provide an advantage to a competitor and thus be deemed proprietary in nature.

The animal use protocol is the document that UVM strenuously objected to release of in testimony before the Public Records Study Committee in 2011 but, as explained herein, this document merely ensures that the proposed experiment will comply with the federal Animal Welfare Act and thus contains no more than *very basic* information about the care and use of animals. I invite you to review UVM's animal use protocol form, which is available at http://www.uvm.edu/iacuc/?Page=iacuc_formslibrary.html, and imagine yourself as a competitor who wishes to replicate an experiment or gain some commercial advantage over the faculty member who has submitted this form. Would you be able to do that, even if all information submitted on the form was released to you? I suggest that you would not.

The vast majority of the information solicited on UVM's animal use protocol refers to the welfare of the animals, with questions such as: what species will be used; will there be prolonged restraint of the animal; will the animal be subjected to burns or trauma; will there be unalleviated pain or distress; will there be euthanasia without anesthesia; why are live animals required for the project; and so on.

UVM' form requires a "Protocol Synopsis" for *all* research, which includes: "[A] brief non-technical description of the research or teaching project, **emphasizing the use of animals ...**" (Emphasis in original). The protocol expressly directs the researcher to *exclude* "hypotheses ... and specific aims" of the research.

UVM's protocol form is very similar in content and length (the basic form is 15 pages) to protocol forms used across the country, which are released to citizens in the vast majority of the states.¹

IV. Vermont can achieve greater transparency and still protect the intellectual property rights of its researchers, as most states have chosen to do

The VT public records act already includes an exemption for "*trade secrets, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it.*"

There are approximately 30 states that *do not* have an exemption that *expressly* addresses research records. In most of those jurisdictions, facilities utilize general exemptions for trade secrets and commercially valuable information, like the Vermont exemption I have just quoted, allowing proprietary information to be redacted from research records as appropriate, with the balance of the information released to the citizens.

Nonetheless, most of these states do not find it necessary to redact even information about experimental design from research protocols. For example, in North Carolina, the home of "Research Triangle" which is the largest concentration of biomedical research facilities in the country, North Carolina State University (NCSU) and other public institutions release protocols in full with only the names of researchers and their contact information redacted. Notably, the descriptions of the experimental design can be quite detailed. A sample of a completed NCSU protocol is available on request.

The Vermont public records act currently includes a requirement that an agency redact information that can be properly withheld and release the balance of information to the citizens, as is the practice in North Carolina and most other states.

¹ Where UVM differs from some institutions is that it requires additional information for specified types of procedures such as experiments using hazardous materials. Yet, the additional information that is required still centers on the care of the animal, rather than on a confidential surgical technique, an experimental drug formulation, or other material that might be proprietary. In addition, for protocols that do not have accompanying grant proposals, UVM researchers are instructed to provide a research plan, which does include hypotheses and specific aims of the research. Some information contained in a research plan, such as the hypothesis, might be proprietary in some instances. However, this constitutes a small percentage of the information contained in the protocol, and UVM and other state research facilities can withhold this specific information under the public records act even in the absence of the current, over-reaching exemption for all information about research.

In the approximately 20 states that *do* have an exemption for research records, the exemptions vary in breadth and thus, even in these states, many records are still released, including research protocols. For example, in approximately 10 of the 20 states, the exemption for research records is *expressly* limited to information that is proprietary. In other states, the exemption is limited to research data, or to specific information provided in confidence by a private party, for example. What is clear is that in these statutes the focus is on protection of proprietary information and there is not a blanket exemption for research records.

My clients have submitted hundreds and hundreds of public records act requests over the past 16 years that I have practiced in this area of law. Those requests almost always include requests for research protocols and other research records noted above. I can testify to the fact that my clients *routinely* receive protocols, either in original unredacted form or with very few redactions. Even in California, with its claims of concerns for researcher safety, protocols are released with only the names and other identifying information about researchers redacted.

As you can see, there are many nuances to the laws on this topic. What I hope is clear to the Committee is that Vermont has one of the broadest exemptions for research records in the country, and the language in H 757 will do little to nothing to increase transparency.

I respectfully request that the Committee revise the language in H 757 to provide greater transparency, while at the same time leaving in place the exemption that protects information that is truly proprietary.

Respectfully submitted,

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