ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2005

Ms. Barbara M. Holthaus
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-09895

Dear Ms. Holthaus :

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 235514.

The University of Texas Medical Branch at Galveston ("UTMB") received a request for four categories of information regarding any incident and investigative reports concerning a named person during the year 2003, as well as all documents forwarded to the Galveston County District Attorney's Office regarding the death of the named person. You state that there are no documents responsive to the request for all documents forwarded to the Galveston County District Attorney's Office regarding the death of the named person. You state that some of the responsive information will be withheld pursuant to a previous determination issued by this office as the circumstances have not changed since the issuance of the prior ruling. *See* Open Records Letter No. 2004-0339 (2004) (concluding that, with the exception of the basic information, UTMB could withhold the incident reports relating to the death of the named person being investigated by the City of Galveston Police Department under section 552.108(a)(1) of the Government Code); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of first type of previous determination under section 552.301(a)). You claim that the remaining responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1]

[1]We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim that the remaining responsive information is excepted from disclosure under section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. Section 160.007 of the Occupations Code states that, "[e]xcept as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged." *See* Occ. Code § 160.007. Section 161.032(a) of the Health and Safety Code provides that "records and proceedings of a medical committee are confidential." *See* Health & Safety Code § 161.032(a). However, neither section 160.007 nor section 161.032 make confidential "records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, or extended care facility." Health & Safety Code § 161.032(b); *see Memorial Hosp.-the Woodlands v. McCown,* 927 S.W.2d 1, 10 (Tex. 1996) (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should accorded same treatment under both statutes in determining if they were made in regular course of business).

Section 161.031(a) defines a medical committee as any committee of a university medical school or health science center. *See* Health & Safety Code § 161.031(a). Section 161.031(b) provides that the "term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution." *Id* § 161.031(b). Section 161.0315 provides in relevant part that "[t]he governing body of a hospital, medical organization [or] university medical school or health science center . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services . . . ." *Id.* § 161.0315(a).

You state that Tab 6 was prepared by a physician peer review committee. You state that Tab 7 consists of minutes from a hospital medical committee. You state that Tab 8 consists of a narrative report created in compliance with the Hospital Quality Committee. Upon review, we agree that Tab 6 constitutes a record of a peer review committee that is protected by section 160.007 of the Occupations Code. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997); *Memorial Hosp.-the Woodlands,* 927 S.W.2d at 3. Further, we find that Tabs 7 and 8 constitute records of a medical review committee that are protected by section 161.031 of the Health and Safety Code. *See Jordan v. Court of Appeals*, 701 S.W.2d 644, 647-48 (Tex. 1985) (determining that statutory predecessor extended to documents prepared by or at direction of committee in order to conduct open and thorough review, and privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product); *see also* Open Records Decision No. 591 (1991) (concluding that purpose of predecessor statute was to encourage frank discussion by medical professionals). Accordingly, Tab 6 must be withheld under section 552.101 in conjunction with section 160.007 of the Occupations Code and

Tabs 7 and 8 must be withheld under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

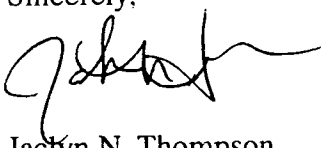
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 235514

Enc. Submitted documents

c: Anthony P. Griffin
1115 Moody
Galveston, TX 77550
(w/o enclosures)