



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 4, 2007

Ms. Carol Longoria  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2007-12931

Dear Ms. Longoria:

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# 290838.

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for 1) "[a]ll CDC/APHIS Form 3's that have been filed;" 2) information related to "possible or actual escape from primary containment, human exposures and/or laboratory-acquired infections involving risk group 2 or higher" during a specified time period; 3) "[a]ll minutes. . . of all meetings of the [university] Institutional Biosafety Committee" during a specified time period; and 4) "[a]ll Notifications of Use for risk group 3 or higher" during a specified time period. You state that the university does not maintain information responsive to item 1.<sup>1</sup> You also state that the university has released a portion of the requested information. However, you claim that the submitted 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.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes. Section 161.032(a) of the Health and Safety Code makes confidential the "records and proceedings of a medical committee." Health & Safety Code § 161.032(a). A "medical committee" is defined as any committee, including a joint committee of a hospital, medical organization, university medical school

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<sup>1</sup>We note that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); see also Attorney General Opinion H-90 (1973); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975).

or health science center, health maintenance organization, or extended care facility. Health & Safety Code § 161.031(a). Moreover 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.” Health & Safety Code § 161.031(b).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996)(orig. proceeding); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988)(orig. proceeding); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986)(orig. proceeding); *Hood v. Phillips*, 554 S.W.2d 160 (Tex. 1977). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. Protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing, among other things, statutory predecessor to Health & Safety Code § 161.032).

You state that the submitted information constitutes records of the university’s Biological and Chemical Safety Advisory Committee (the “BCSAC”). You state that the BCSAC reviews research safety plans that are used to conduct research involving biological agents. You further state that the BCSAC regulates all use of infectious substances, pathogens, and chemicals, ensuring compliance with necessary guidelines. After reviewing your arguments, we agree that the BCSAC is a “medical committee” as defined by section 161.031. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032(a) 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,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/jb

Ref: ID# 290838

Enc. Submitted documents

c: Mr. Mark Smith  
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(w/o enclosures)