



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 28, 2008

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

OR2008-01270

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# 300501.

The University of Texas Medical Branch at Galveston (the "university") received a request for five categories of information pertaining to a specified institutional compliance agreement. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

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<sup>1</sup>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.

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

...

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital . . . [or] hospital district [.]

Health & Safety Code § 161.032(c), (f). You state that the submitted information is maintained by the university's Office of Institutional Compliance in connection with an investigation of medical billing practices. You explain that the compliance investigator prepared these documents under the direction of the Compliance Program's compliance officer. You further indicate that these documents are not made or maintained in the regular course of business. Based on your representations and our review of the information at issue, we conclude that the submitted information consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Accordingly, the university must withhold the submitted information under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

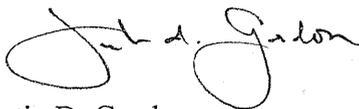
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 challenge 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 300501

Enc. Submitted documents

c: Mr. George Reamy  
28 Elkins Street  
Lorena, Texas 76655  
(w/o enclosures)