



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2008

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

OR2008-03698

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# 305168.

The University of Texas Medical Branch at Galveston (the "university") received a request for all information pertaining to a specified individual. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ In addition, you note that release of the remaining information may implicate the privacy interests of a third party. Accordingly, you state that you have notified the individual whose privacy interests are at issue of the request and of his right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (providing that interested parties may submit comments stating why information should or should not be released).² We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and

¹We note that the university has redacted some of the submitted information. As we are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, the university should refrain from redacting any information that it submits to this office in seeking an open records ruling. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

²We note that the individual has not submitted any comments regarding why the requested information should not be released. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate the privacy interests of the individual.

encompasses information made confidential by other statutes. *See* Gov't Code § 552.101. Medical peer review is defined by the Medical Practice Act (the "MPA"), found at subtitle B of title 3 of the Occupations Code, to mean "the evaluation of medical and health care services, including evaluation of the qualifications of professional health care practitioners and of patient care rendered by those practitioners." Occ. Code § 151.002(a)(7). Medical peer review includes evaluation of the "merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint." *Id.* § 151.002(a)(7)(A). A medical peer review committee is "a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services[.]" *Id.* § 151.002(a)(8). Section 160.007 of the MPA 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." *Id.* § 160.007.

You assert that the information contained in Tab 6 was created as part of a medical peer review inquiry. You explain that the information at issue consists of several physicians' professional assessments regarding a specified resident doctor. You further state that the information at issue "was reviewed by an ad hoc [u]niversity committee to evaluate the resident's proficiency in general surgery and was used to make a determination on the continuation of the former resident's contract...and there is no other avenue in the normal course of business by which this information would be created and/or maintained by the [u]niversity." Having reviewed the submitted information, and based on your representations that the information at issue was created by or at the direction of medical committee or medical peer review committee, we agree that the information in Tab 6 is confidential pursuant to 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 v. McCown*, 927 S.W.2d 1, 5 (Tex. 1996) (finding that review by medical staff committee of application for staff privileges qualifies as medical peer review because it necessarily involves review of physician's qualifications, competence, and ethics). Therefore, the information in Tab 6 must be withheld under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code.³

We note that some of the remaining information may be protected under section 552.117 of the Government Code.⁴ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current

³As our ruling is dispositive, we need not address your remaining argument for this information.

⁴The Office of the Attorney General will raise a mandatory exception like section 552.117 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). In this case, you do not inform us nor provide documentation showing that the employee whose information is at issue timely elected confidentiality under section 552.024. Therefore, if the employee concerned timely elected to keep his personal information confidential, then you must withhold the information that we have marked under section 552.117(a)(1) of the Government Code. The university may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election.

In summary, the university must withhold the information in Tab 6 under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code. If the employee concerned timely elected to keep his personal information confidential, you must withhold the information that we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 305168

Enc. Submitted documents

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