



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2009

Mr. Kevin L. Williams  
Associate General Counsel  
Texas Tech University System  
3601 4<sup>th</sup> Street, STOP 6246  
Lubbock, Texas 79430-6246

OR2009-10693

Dear Mr. Williams:

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# 350953.

The Texas Tech University Health Sciences Center (the "university") received a request for "[a]ll documents submitted to the [university's] Animal Care and Use Committee to obtain approval to use shelter animals in medical research or training." You claim 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.<sup>1</sup>

Initially, we note that the university sent the requestor an estimate of the cost of providing the requested information. See Gov't Code §§ 552.2615(a), 552.263(f). You have informed us that you have not received a response to the cost estimate. *See id.* § 552.2615(a)(2) (request automatically withdrawn if requestor does not respond to itemized estimate of charges). However, we have examined the cost estimate and determined that it does not comply with the provisions of section 552.2615 of the Act because it does not inform the

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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.

requestor that inspection of the records would be a less costly method of obtaining the information. *See id.* § 552.2615(a). Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information made confidential by other statutes, such as section 161.032 of the Health and Safety Code, which provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

...

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

Health & Safety Code § 161.032(a), (c). A "medical committee" is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See id.* § 161.031(a). The term also encompasses "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). You contend the university's Institutional Animal Care and Use Committee ("IACUC") is a "medical committee."

The precise scope of the "medical committee" provision has been the subject of a number of judicial decisions. *See Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish "documents generated by the committee in order to conduct open and thorough review" are confidential. *Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor's Hosp. v. West*, 765 S.W.2d 526 (Tex. App.—Fort Worth 1988, orig proceeding). 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.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032).

You state the IACUC is a committee of the university that is responsible for reviewing animal research, teaching protocols, and animal research facilities as well as supporting and

protecting officially sanctioned use of animals in research, teaching, and service. Accordingly, we find the IACUC is a medical committee as defined by section 161.031. You state the submitted information consists of research protocols and other documents used by the IACUC in its deliberative proceedings. You state that the documents at issue were created for and on the behalf of the IACUC and are used solely for IACUC purposes. Based on your representations and our review, we conclude that the submitted information constitutes records, information, or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code. We therefore conclude that this information is confidential under section 161.032(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 350953

Enc. Submitted documents

c: Requestor  
(w/o enclosures)