



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 11, 2009

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

OR2009-12845

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# 355474.

The Texas Tech University Health Sciences Center (the "university") received a request for the veterinary and animal use records for all cats and dogs obtained from Odessa Animal Control from 2007 until the date of the request. You state the university has no records pertaining to dogs obtained from Odessa Animal Control.¹ You state you have released the veterinary records to the requestor. 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.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-08196 (2009). As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the university may continue to rely on that ruling as a previous determination and withhold the same information that was at issue in the prior ruling in accordance with the previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 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 section 161.032 of the Health and Safety Code). Additionally, we note section 161.032 does not make confidential "records made or maintained in the regular course of business by a hospital[.]" Health & Safety Code § 161.032(f); *see Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 is clear signal records should be accorded same treatment under both statutes in determining if they were

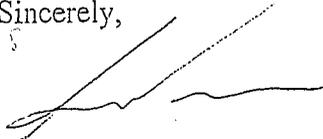
made in ordinary course of business). The phrase "records made or maintained in the regular course of business" has been construed to mean records that are neither created nor obtained in connection with a medical committee's deliberative proceedings. See *Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (discussing *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988), and *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1985)).

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 was created for and on the behalf of the IACUC so that the IACUC can monitor research and fulfill its duties relating to the care of animals used under specific research protocols. You have submitted affidavits from members of the university's IACUC. These affidavits assert the submitted information was not created in the ordinary course of business but was specifically created at the direction of the IACUC and submitted to the IACUC for the purpose of fulfilling its duties. Based on your representations and our review, we conclude 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 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, 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 355474

Enc. Submitted documents

c: Requestor
(w/o enclosures)
