



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

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

OR2010-05180

Dear Ms. Chatterjee:

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# 375705 (OGC# 128482).

The University of Texas Medical Branch at Galveston (the "university") received a request for e-mails, correspondence, and any "[i]nvestigative results" relating to a specified complaint.¹ You state some of the requested information will be released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You indicate the university sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We 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.

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. Section 552.101 encompasses confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

(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.

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

...

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

Health & Safety Code § 161.032(c), (e), (f). The precise scope of this provision has been the subject of a number of judicial decisions. *See, e.g., 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 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 section 161.032). We note records made or maintained in the regular course of business consist of “records kept in connection with the treatment of the individual patients as well as the business and administrative files and papers apart from committee deliberations.” *See Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977).

You assert the submitted information is maintained by the university’s Office of Institutional Compliance (the “OIC”) in connection with an internal compliance investigation into a complaint regarding the payment of overtime wages. You inform us this investigation was

performed in accordance with the university's compliance program. You indicate the compliance program was developed pursuant to the guidelines issued by the Office of Inspector General of the United States Department of Health and Human Services. Based on your representations and our review, we conclude portions of the submitted information consist of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Accordingly, the university must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.³ However, we find the remaining signed time entry forms and other administrative documents were created in the regular course of the university's business. See Health & Safety Code § 161.032(f). Therefore, this information is not confidential under section 161.032 of the Health and Safety Code and it may not be withheld under section 552.101 on that basis.

You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. Section 51.971 provides:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought

³As our ruling is dispositive, we need not address your remaining arguments against disclosure as they pertain to this information.

guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

...

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c), (d). You state the submitted information pertains to a completed compliance program investigation and that it relates to the university's internal process of review to assess and ultimately ensure that its employees complied with all applicable laws, rules, regulations, and policies. Thus, we agree the submitted information pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You state the investigation has concluded and the allegations were found to be unsubstantiated or without merit. *See id.* § 51.971(c)(2).

You claim the remaining information is confidential under subsection 51.971(c). We note, however, the remaining information contains only the name of the complainant in the investigation at issue. Further, the requestor is the complainant identified in the remaining information. Thus, section 51.971(c)(1) does not apply to the complainant's identity in this instance. *See id.* § 51.971(d) (section 51.971(c) does not apply to individual who consents to disclosure). Consequently, none of the remaining information is confidential under section 51.971(c), and no portion of it may be withheld under section 552.101 on that basis.

In summary, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. As you raise no further exception to the disclosure of the remaining information, it must be released to this requestor.⁴

⁴We note the information being released contains confidential information to which the requestor has a right of access. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the university receives another request for this same information from a different requestor, then the university should again seek a decision from this office.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 375705

Enc. Submitted documents

c: Requestor
(w/o enclosures)