



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 10, 2010

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

OR2010-18531

Dear Ms. Angadicheril:

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# 402867 (OGC# 133648).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for all correspondence to or from six named individuals or their assistants regarding the Accreditation Council for Graduate Medical Education (the "council"). 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.

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 information protected by other statutes, including 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 [the Act].

...
(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). For purposes of this confidentiality provision, a “medical committee” includes any committee, including a joint committee, of . . . a hospital[,] a medical organization [or] hospital district[.]” *Id.* § 161.031(a)(1), (2), (6). Section 161.0315 provides in relevant part “[t]he governing body of a hospital, medical organization [or] hospital district . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services [.]” *Id.* § 161.0315(a).

The precise scope of the “medical committee” 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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Jordan*, 701 S.W.2d at 647-48. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Id.* at 648. 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, among other statutes, statutory predecessor to section 161.032). 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 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business).

You state the submitted information was created and maintained on behalf of the council, which is an organization responsible for accrediting medical residency education programs. You inform us the council develops standards for residency education programs, monitors these programs for compliance, and issues recommendations regarding these programs. You assert the submitted information consists of protected medical committee records that evaluate the university’s residency education programs. Based on your representations, we agree the council constitutes a medical committee as defined by section 161.031. *See* Health & Safety Code § 161.031(c); *see also Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d

858 (Tex. App.—San Antonio 1993, no pet.) (finding Joint Commission on Accreditation of Healthcare Organizations is medical committee under section 161.031(a)(2) and its accreditation report of hospital is confidential under section 161.032). Further, you represent the information at issue was prepared by or for the council at the direction of the university's Graduate Medical Education Committee (the "committee"). You state the committee assists the university's residency and fellowship training programs with accreditation issues and reviews all communications to and from the council regarding accreditation. Based on your representations, we agree the committee constitutes a medical committee as defined by section 161.031 of the Health and Safety Code. Upon review, we agree the submitted information consists of confidential records of a medical review committee under section 161.032 of the Health and Safety Code. Therefore, the university must withhold the submitted information 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 402867

Enc. Submitted documents

c: Requestor
(w/o enclosures)