



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2010

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

OR2010-18682

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# 402868 (OGC No. 133650).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for "all documents or emails related to the search and selection of a replacement for [the former chairman] of the Division for Vascular Surgery" as well as documents related to the former's chairman's departure. 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 representative sample of information.¹ We have also received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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. Section 552.101 encompasses information protected by other statutes, including section 161.032 of the Health and Safety Code, which provides in part:

¹We assume that the "representative sample" of information 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.

(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, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer 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 university medical school or health science center[.]” *Id.* § 161.031(a)(3). 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).

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 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 statutes, statutory predecessor to section 161.032). We note that section 161.032 does not make confidential “records made or maintained in the regular course of business by a . . . university medical center or health science center[.]” Health & Safety Code § 161.032(f); *see McCown*, 927 S.W.2d at 10 (stating that 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). 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 *McCown*, 927 S.W.2d at 9-10 (Tex. 1996) (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

The university asserts the search committee is a medical committee for the purposes of section 161.031 of the Health and Safety Code and the submitted information is confidential under section 161.032 of the Health and Safety Code as records of a medical committee. The university informs us that "the search committee was established to conduct a national search to select a candidate to fill [the Chair of Vascular Surgery Division] position." The university explains the search committee was tasked with identifying desirable candidates and soliciting the submission of curriculum vitae from qualified applicants. Upon review of the university's arguments and the submitted information, we agree the search committee is a committee established by the university and constitutes a medical committee as defined by section 161.031. See generally, *Memorial Hosp.—The Woodlands*, 927 S.W.2d at 8 (term "medical committee" is broadly defined).

The university asserts the information at issue is confidential pursuant to section 161.032 of the Health and Safety Code because it was "created by a medical committee and/or reviewed by that committee in conjunction with its charge," and was "created and/or considered by the search committee for the position of Chair of the University's Vascular Surgery Division." The requestor's representative argues that the information at issue was created during the ordinary course of business and, thus, is not protected by section 161.032 of the Health and Safety Code. As noted above, the search committee was tasked with filling the Vascular Surgery Division chair position. To facilitate this goal, the university indicates the search committee investigated and evaluated the qualifications of candidates. The documents at issue consist of communications between committee members and candidates related to the search for and qualifications of potential candidates. As stated above, in *Jordan v. Court of Appeals*, the court states that the "privilege extends to documents that have been prepared by or at the direction of the committee for committee purposes." See 701 S.W.2d at 648. Based on the university's arguments and our review, we find that the information at issue was prepared by or at the direction of a medical committee in selecting a candidate and was not prepared and is not maintained in the regular course of business. See generally, *Memorial Hosp.—The Woodlands*, 927 S.W.2d at 8-11 (records maintained by medical committee in connection with credentialing process are not maintained in the regular course of business and are confidential under section 161.032). Thus, the requested information is within the scope of section 161.032.

The requestor's representative argues that, pursuant to *Jordan v. Court of Appeals*, the university has waived its "medical committee privilege" because some information has been communicated "with persons outside the privileged circle." See 701 S.W.2d 644 at 648-49. As noted above, the submitted information was prepared by or at the direction of a medical committee. There is no indication the requested information has been disclosed to any outside party by the medical committee. Therefore, the university must withhold the

requested information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 402868

Enc. Submitted documents

c: Requestor
(w/o enclosures)