



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2011

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

OR2011-01682

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# 407949 (OGC # 134226).

The University of Texas Medical Branch at Galveston ("UTMB") received a request for information relating to a named individual and her assignment and removal from a position with the Federal Bureau of Prisons. You state some of the requested information either has been or will be released. You state responsive information protected by section 552.117 of the Government Code will be redacted pursuant to section 552.024(c) of the Government Code.<sup>1</sup> You claim other responsive information is excepted from disclosure under sections 552.101, 552.111, and 552.137 of the Government Code. You also contend some of the responsive information is not subject to the Act. We have considered your arguments and reviewed the information you submitted.

Initially, we address your assertion that, pursuant to section 181.006 of the Health and Safety Code, some of the information you have marked is not subject to the Act. Section 181.006 provides in part that "[f]or a covered entity that is a governmental unit, an individual's

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<sup>1</sup>Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024. See Gov't Code § 552.117(a)(1). Section 552.024(c) authorizes a governmental body to redact these types of information if the current or former official or employee to whom the information pertains chooses not to allow public access to the information. See *id.* § 552.024(c), (c-1), (c-2).

protected health information . . . is not public information and is not subject to disclosure under [the Act].” Health & Safety Code § 181.006(2). We will assume, without deciding, UTMB is a covered entity. Section 181.006(2) does not remove protected health information from the Act’s application, but rather states such information is “not public information and is not subject to disclosure under [the Act].” We interpret this language to mean a covered entity’s protected health information is subject to the Act’s application. Furthermore, section 181.006, when demonstrated to be applicable, makes confidential information it covers. Thus, we will consider your arguments against disclosure of all the marked information UTMB seeks to withhold.

Section 552.101 of the Government Code exempts 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 other statutes make confidential. Section 161.032 of the Health and Safety Code 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.

...

(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) (footnotes omitted). 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, or extended care facility. *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). The precise scope of section 161.032 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.” See *Jordan*, 701 S.W.2d at 647-48. However, this protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648; see Open Records Decision No. 591 (1991) (construing statutory predecessor to Health and Safety Code § 161.032). We note 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 Occ. Code § 160.007 in Health and Safety Code § 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 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

You have marked the information UTMB seeks to withhold on the basis of section 161.032 of the Health and Safety Code. You explain UTMB provides managed health care to offenders at the Federal Correctional Complex in Beaumont, Texas. You state the marked information relates to UTMB’s Executive Team for Correctional Managed Care at Federal Bureau of Prisons (the “Executive Team”). You have identified the members of the Executive Team. You state the information at issue was requested, provided to, and reviewed by the Executive Team in connection with a review of professional performance and medical care at the Federal Correctional Complex. Based on your representations and our review of the information at issue, we find the marked information constitutes records of a medical committee for purposes of sections 161.031 and 161.032 of the Health and Safety Code. We therefore conclude UTMB must withhold the marked information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health & Safety Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

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<sup>2</sup>As we are able to make this determination, we need not address your other arguments against disclosure of the information in question.

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You have marked the remaining information UTMB seeks to withhold on privacy grounds. We find the information at issue does not fall within any of the constitutional zones of privacy. We also find the information at issue is not highly intimate or embarrassing and a matter of no legitimate public interest. We therefore conclude UTMB may not withhold the marked information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

You also claim section 552.111 of the Government Code, which excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You have marked the information UTMB seeks to withhold under section 552.111. You state the information at issue contains policy advice and recommendations regarding medical care. Based on your representations and our review of the information at issue, we conclude UTMB may withhold the marked information under section 552.111 of the Government Code.

Lastly, section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You have marked e-mail addresses UTMB seeks to withhold under section 552.137. We note one of the e-mail addresses at issue is maintained by a governmental entity for one of its officials or employees. As such, that e-mail address may not be withheld under section 552.137. We also note the requestor appears to be an attorney representing the owner of the other e-mail address at issue. Thus, because section 552.137 protects personal privacy, the requestor has a right of access to his client's e-mail address under section 552.137(b). We therefore conclude UTMB may not withhold either of the marked e-mail addresses under section 552.137 of the Government Code.<sup>3</sup>

In summary, UTMB (1) must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code; and (2) may withhold the information you have marked under section 552.111 of the Government Code. UTMB must release the rest of the submitted information.

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.

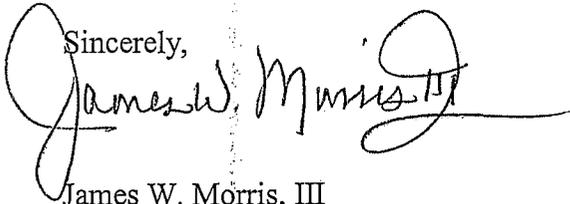
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code. Thus, should UTMB receive another request for the information that contains the requestor's client's e-mail address from a person without a right of access to the e-mail address, UTMB may withhold the e-mail address without the necessity of requesting a decision.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 407949

Enc: Submitted documents

c: Requestor  
(w/o enclosures)