



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

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

OR2011-06288

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# 416844 (OGC# 135652).

The University of Texas Health Science Center at Houston (the "university") received a request for all information the university has regarding the requestor, including but not limited to his entire application file, hand written notes taken by his evaluators, his rank number on the wait-list, and all e-mails, notes, correspondence, and memoranda regarding the requestor. You state the university has released some of the requested information. You claim the remaining information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We 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. 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, 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) (footnotes omitted). A “medical committee” is defined as any committee, including a joint committee, of a hospital, a medical organization, a university medical school or health science center, a health maintenance organization licensed under chapter 843 of the Insurance Code, an 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). Section 161.0315 of the Health and Safety Code states “[t]he governing body of a hospital [or a] university medical school or health science center . . . 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 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,” but does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *See Jordan*, 701 S.W.2d at 647-48; *see* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health and Safety Code § 161.032). 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 of the Occupation Code in section 161.032 of the Health and Safety Code 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.

You state the information at issue consists of records of the university’s school of medicine admissions committee, which you assert is a medical committee for purposes of section 161.031. You explain the admissions committee is charged with reviewing applications and determining who to interview and ultimately deciding to whom to make offers to join the incoming medical school class. You inform us the committee upholds the university’s mission of providing the best healthcare possible by educating health science professionals, and preparing graduates who will advance the quality of human life by enhancing the diagnosis, treatment, and prevention of disease and injury, as well as promote individual health and community well-being. You also inform us this committee consists of physician faculty members of the university and is overseen by the Assistant Dean for Admissions and Student Affairs, who is also a physician. Based upon your representations and our review, we agree the admissions committee constitutes a medical committee as defined by section 161.031. You state the submitted information was created and/or considered by the admissions committee. Upon review of your arguments and the information at issue, we conclude that the submitted information consists of records of a medical committee. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read "Kate Hartfield". The signature is written in a cursive, flowing style.

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 416844

Enc. Submitted documents

c: Requestor
(w/o enclosures)