



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 8, 2011

Mr. Kevin L. Williams
Associate General Counsel
Texas Tech University System
Office of Vice Chancellor and General Counsel
3601 4th Street STOP 6246, Suite 2B141
Lubbock, Texas 79430-6246

OR2011-08139

Dear Mr. Williams:

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# 420146.

Texas Tech University Health Sciences Center (the "university") received two requests from the same requestor for all documents relating to the requestor's dossier application and review for tenure and promotion. 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 from 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.*

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

§ 552.101. This exception encompasses information other statutes make confidential, such as 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 Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). 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). 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 provides in relevant part “[t]he governing body of 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). You contend the university’s School of Pharmacy Faculty Affairs Committee (the “tenure committee”) is a “medical committee.”

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See 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); *Hood v. Phillips*, 554 S.W.2d 160 (Tex. 1977); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977); *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195 (Tex. App.—Corpus Christi 1993), disapproved by *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1; *Doctor’s Hosp. v. West*, 765 S.W.2d 812 (Tex. App.—Houston [1st Dist.] 1988); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex. App.—Fort Worth 1988). These cases establish “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 statutory predecessor to section 161.032 of the Health and Safety Code). 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 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 consists of documents used by the tenure committee in carrying out its duties under university bylaws. You also state the tenure committee's duties include the evaluation of individual faculty for recommendation of academic promotion and tenure. You assert the submitted information was specifically created at the direction of the tenure committee and "submitted to it for the purpose of fulfilling its duties." Based on your representations and our review, we agree the tenure committee constitutes a medical peer review committee as defined by section 161.031. Furthermore, upon review of the submitted information, we find the information at issue consists of records of a medical committee. Accordingly, the university must withhold the information at issue 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 420146

Enc. Submitted documents

c: Requestor
(w/o enclosures)