



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Ms. Neera Chatterjee
The University of Texas System
Office of the General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2011-09209

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# 422455 (OGC# 136959).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request to inspect all university records pertaining to a named individual, including but not limited to evaluations by the named individual, medical residents and fellow faculty; his curriculum vitae; contracts; job descriptions; correspondence; salary information; conflict and personal finance disclosures; travel related records; commendations; promotion records; and disciplinary records. You state you will release much of the responsive information. You claim the remaining requested 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

Initially, we note the requestor has excluded from his request information that would identify patients of the named individual, the named individual's social security number and personal banking information, and third-party e-mail addresses. Thus, these types of information are not responsive to this request. This ruling does not address the public availability of any

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information that is not responsive to the request, and the university need not release such 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 exception encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code, which provides in relevant 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 [or] a medical organization [or] hospital district[.]” *Id.* § 161.031(a). Section 161.0315 provides in relevant part that “[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 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.*; *see also* Open Records Decision No. 591 (1991) (construing 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 hospital[.]” Health & Safety Code § 161.032(f); *see Memorial Hosp.—The Woodlands*, 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).

You state the Credentialing and Privileges Committee (the "committee") makes recommendations to the university's Hospital Board regarding "whether particular health care providers should receive credentials and privileges at the [u]niversity's hospitals[.]" Based on your representation and upon our review, we agree the committee constitutes a medical committee for the purposes of section 161.032 of the Health and Safety Code. You also state a portion of the information at issue was prepared by, submitted to, obtained by, or reviewed by the committee for the purpose of assessing the named individual seeking credentialing and privileges at the university's hospitals. We understand the committee utilizes this information in making its recommendations to the Medical Services Research and Development Board and the University Hospital Board. Upon our review of the information, we determine this portion of the information at issue constitutes confidential records of a medical peer review committee under section 161.032 of the Health and Safety Code and was not created and is not maintained in the regular course of business. *See Mem'l Hosp.*, 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, this information is within the scope of section 161.032 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code.

You assert the resident evaluations are performed at the directive of each residency program's clinical competence committee, which is tasked with ensuring that faculty members' residency training requirements meet the American Council for Graduate Medical Education ("ACGME") standards. Thus, we agree this committee constitutes a medical committee for the purposes of section 161.032 of the Health and Safety Code. You further assert the submitted evaluations were submitted to and reviewed by the residency program director and the clinical competence committee to ensure compliance with the standard of care and training set forth by the ACGME for accreditation purposes. Based on your representations and our review, we determine the resident evaluations constitute confidential records of a medical committee under section 161.032 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code.²

In summary, the university must withhold the requested information from disclosure 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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 cursive script that reads "Kirsten Brew".

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 422455

Enc. Submitted documents

c: Requestor
(w/o enclosures)