



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2011

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

OR2011-09219

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# 422452 (OGC# 136958).

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to specified research that compares laparoscopic and open hernia-related procedures. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential 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 . . . 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) (footnote omitted). Section 161.031(a) defines a "medical committee" as "any committee . . . of . . . (3) a university medical school or health science center[.]" *Id.* § 161.031(a)(3). Section 161.0315 provides in relevant part "[t]he governing body of a hospital [or] 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 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 "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).

You state the Institutional Review Board (the "IRB") is a medical committee established pursuant to federal law in order to review and approve research involving human subjects at the university and other affiliated hospitals. *See* 21 C.F.R. § 56.102(g). Based on your representations, we agree the IRB constitutes a medical committee as defined by section 161.031. You state the submitted information "was submitted to and obtained by the IRB for the purpose of assessing the research involving human subjects that would be performed by [university] employees, including residents and faculty members." Upon review, we agree the submitted information consists of records of the IRB prepared by or at the direction of the IRB for committee purposes. Accordingly, the university must withhold the submitted information under section 552.101 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 the disclosure 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 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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/em

Ref: ID# 422452

Enc. Submitted documents

c: Requestor  
(w/o enclosures)