



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2011-09981

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# 423712 (OGC# 137058).

The University of Texas Southwestern Medical Center (the "university") received a request for twenty-two categories of information pertaining to patient care, the requestor, his wife, two named doctors, a named nurse, university committees, documents relating to discussions between named individuals, and policies and procedures of the university regarding anesthesia and patient complaints. You state the university does not possess information responsive to seven of the twenty-two requested categories of information.¹ You also state information responsive to thirteen categories of the request has been released to the requestor, including through earlier public information requests. *See Gov't Code* § 552.232 (prescribing procedures for response to repetitious or redundant requests for information). 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. We have also 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).

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Initially, we must address the requestor's contention the university failed to comply with the procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). In this instance you state the university received the request for information on April 22, 2011, and the university observed April 22, 2011 as a skeleton crew day. This office does not count any holidays, including skeleton crew days observed by a governmental body, as business days for the purpose of calculating a governmental body's deadline under the Act. Accordingly, you state the university received the instant request on April 25, 2011. The requestor has submitted to this office a copy of his request for information with a copy of the certified mail return receipt, signed and dated, showing a delivery date of April 21, 2011. The information submitted by the requestor shows his request was received by the university on April 21, 2011, not April 25, 2011. Accordingly, you were required to submit your request for a decision to this office no later than May 6, 2011. However, you did not request a ruling from this office until May 9, 2011. Consequently, we find the university failed to comply with the requirements of section 552.301 in requesting this decision from our office.²

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code, this is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W. 3d 469, 475-76 (Tex.App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Thus, your claim under section 552.103 is not a compelling reason to overcome the presumption of openness. Therefore, the university may not withhold any of the submitted information under section 552.103. Section 552.101 of the Government Code,

²As we are able to make this determination, we need not address the requestor's argument the university failed to comply with section 552.301(e-1) of the Government Code. *See* Gov't Code § 552.301(e-1) (governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the requestor not later than the 15th business day after the date of receiving the written request).

however, can provide a compelling reason to overcome this presumption. Accordingly, we address your argument under this exception.

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 section encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code, which provides, in relevant part:

(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].

...

e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

...

(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.

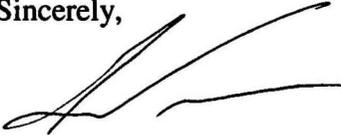
Health & Safety Code § 161.032(c), (e), (f). You state the submitted information, which consists of reports documenting access to certain medical records, was created and maintained by the university’s privacy officer. You state the privacy officer is a compliance officer whose duties include ensuring that only authorized personnel have access to a patient’s medical records. You further state the reports at issue here are generated and used strictly by the compliance officer for the purpose of monitoring, auditing, and investigating the security and privacy of medical records and are not records maintained in the regular course of business. The requestor argues the submitted information is created automatically by a computer system and constitutes a mere log that is maintained in the ordinary course of business as a record of who accessed a particular file and when that particular file was accessed. The university states the log is created for the purpose of documenting access to certain medical records so the compliance officer can monitor, audit, and investigate the security and privacy of those medical records. Thus, based on the university’s

representations and our review, we conclude the submitted information consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Accordingly, the university must withhold the marked information 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/sdk

Ref: ID# 423712

Enc. Submitted documents

c: Requestor
(w/o enclosures)