



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2011

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

OR2011-12498

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# 428561 (OGC# 138112).

The University of Texas System (the "system") received a request for a specified letter of evaluation and specified evaluation forms. Although the system takes no position with respect to the public availability of the submitted information, you state release of this information may implicate the interests of the Texas A&M Health Science Center–Baylor College of Dentistry, the University of Texas Health Science Center at Houston–School of Dentistry, and the University of Texas Health Science Center at San Antonio–School of Dentistry (collectively, the "third parties"). Thus, you notified the third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and considered comments submitted by the third parties.

The third parties raise section 161.032 of the Health and Safety Code for the submitted 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 other statutes make confidential. Section 161.032 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 . . . 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). 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 that “[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 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.* at 648; *see also* Open Records Decision No. 591 (1991) (construing, among other statutes, statutory predecessor to section 161.032). We note 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 Occ. Code § 160.007 in Health and Safety Code § 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). 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 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

The third parties state the submitted information was created or considered by their admissions committees. The third parties state these committees are composed of the third parties' administrators and faculty members who are charged with reviewing the applications of prospective dental students. Further, the third parties inform us the committees are responsible for upholding the third parties' missions of improving health by educating and developing future dentists, educators, and scientists. Based on your representations and our review, we agree the committees are "medical committee[s]" under section 161.031 of the Health and Safety Code. See Health & Safety Code § 161.031(c); see also *Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.—San Antonio 1993, no pet.) (finding that Joint Commission on Accreditation of Healthcare Organizations is medical committee under section 161.031(a)(2)). In addition, we agree the submitted information relates to the committees and is confidential under section 161.032 of the Health and Safety Code as the records of medical committees. Therefore, the system must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032.<sup>1</sup>

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

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<sup>1</sup>As our ruling is dispositive, we need not address the claims raised under section 552.111 of the Government Code.

Ref: ID# 428561

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. R. Brooks Moore  
Managing Counsel, Governance  
Office of General Counsel  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424  
(w/o enclosures)

The University of Texas Health Science Center at Houston  
Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902  
(w/o enclosures)

The University of Texas Health Science Center at San Antonio  
Ms. Zeena Angadicheril  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902  
(w/o enclosures)

Baylor College of Dentistry  
c/o Susan Mitchell Jackson, Executive Director  
Office of Communication and Institutional Advancement  
3302 Gaston Avenue  
Dallas, Texas 75246  
(w/o enclosures)