



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2012

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

OR2012-03001A

Dear Ms. Chatterjee:

This office issued Open Records Letter No. 2012-03001 (2012) on February 27, 2012, in error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2012-03001. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

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# 446551 (OGC# 141276).

The University of Texas Southwestern Medical Center (the "university") received a request for the requestor's "entire file . . . including the confidential part[.]" You state the university will release some of the information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the American Board of Internal Medicine; the American Kidney Fund; Centralized Verification Services; the Department of Veteran's Affairs; Doctors Hospital at White Rock Lake ("Doctors"); the North Dakota State Board of Medical Examiners; Professional Credential Verification Service, Inc.; St. Luke's Regional Medical Center; and the Texas Medical Board (the "TMB") of the request and of their right to submit comments to this office stating why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released). We have received comments from Doctors and

the TMB. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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.* § 552.101. Section 552.101 encompasses 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, 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].

...

(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

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 those submitted to this office.

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 explain some of the requested information consists of records held by the university’s Fellowship Clinical Competence Committee (the “FCCC”). You explain this committee is charged with reviewing resident and fellow performance and making recommendations to the program directors regarding the promotion, performance improvement, and discipline of residents and fellows. Based on your representations and our review, we agree the FCCC is a medical committee for purposes of section 161.032. Accordingly, the university must withhold the FCCC records you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.²

You state the remaining information was obtained by the university from other institutions. Although you state these records are part of those institutions’ credentialing and privileges committees, you have not demonstrated the applicability of section 161.032 to the remaining information. However, Doctors asserts portions of this information consist of records of its own credentialing and privileges committee, which we understand is responsible for evaluating the performance of its physicians. Based on Doctors’ representations and our review of the information, we conclude the university must withhold the information you have marked pertaining to Doctors under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. None of the other third parties has explained how the remaining information consists of records of a medical committee. Thus, the university may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 160.007 of the Occupations Code, which provides, in part:

(a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

Occ. Code § 160.007(a). “Medical peer review” is defined by the Medical Practice Act, subtitle B of title 3 of the Occupations Code, to mean “the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners.” *Id.* § 151.002(a)(7). A medical peer review committee is “a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is

²As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information.

authorized to evaluate the quality of medical and health care services or the competence of physicians[.]” *Id.* § 151.002(a)(8). You state the remaining information “was submitted to and obtained by the [u]niversity for the purposes of assessing the professional skill and care of physicians.” However, you do not state any of the remaining information consists of records of a university medical peer review committee. Accordingly, the university may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 164.007(c) of the Occupations Code, which provides:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the [TMB] or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the [TMB] or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the [TMB].

Id. § 164.007(c). The submitted information includes a License Application Form L (Physician Licensure Evaluation), which was received or gathered by the TMB. Upon review, we find the university must withhold the submitted License Application Form L under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code.³

In summary, the university must withhold the information you marked pertaining to the university’s FCCC committee, and the information you marked pertaining to Doctors, under section 552.101 of the Government Code in conjunction with section 161.032 of the Occupations Code. The university must withhold the submitted License Application Form L under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code. The remaining information must be released.⁴

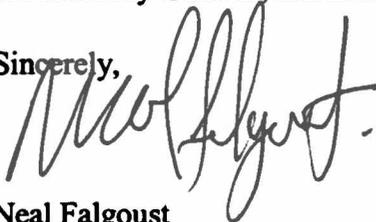
³As our ruling is dispositive, we need not address the university’s arguments against disclosure of this information.

⁴We note the requestor has a right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the university receives another request for this information from a different requestor, it must again seek a ruling from this office.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 446551

c: Requestor

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