



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2012

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

OR2012-08838

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# 456142 (OGC # 142814).

The University of Texas Health Science Center at San Antonio (the "university") received a request for the report pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information pertains to a completed investigation subject to section 552.022(a)(1). You do not claim section 552.108

of the Government Code. Although you seek to withhold the information at issue under section 552.107 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the university may not withhold this information under section 552.107 of the Government Code. However, we note the attorney-client privilege encompassed by section 552.107 is also found in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Furthermore, information subject to section 552.022(a)(1) may be withheld under section 552.101 of the Government Code. Accordingly, we will consider the applicability of section 552.101 and rule 503 to 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. Section 552.101 encompasses confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . 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 . . . do[es] not apply to records made or maintained in the regular course of business by a hospital, . . . university medical center or health science center, [or] hospital district[.]

Health & Safety Code § 161.032(c), (e), (f). You inform us that the submitted information is maintained by the university's Office of Regulatory Affairs and Compliance in connection with a compliance investigation. You also inform us that this investigation was performed in accordance with the university's compliance program. You indicate the documents at issue are not made or maintained in the regular course of business. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained

in regular course of business). Based on your 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 this information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<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/dls

Ref: ID# 456142

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.