



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2012

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

OR2012-12880

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# 462333 (OGC# 144229).

The University of Texas Medical Branch at Galveston (the "university") received a request for the names and titles of three specified employees and the name of a specified researcher. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note most of the submitted information is not responsive to the request for information because it does not consist of the requested names and titles. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

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, such as section 51.971 of the Education Code, which provides, in part:

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(e)(1). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education. *Id.* § 51.971(a)(1). You inform us that some the responsive information pertains to an investigation involving personnel matters at the university that was initiated as a result of a complaint that was made to the university. You also inform us that the purpose of this investigation is to “assess and ultimately ensure that [the university’s] employees complied with all applicable law, rules, regulations, and policies.” Based on your representations and our review, we agree the information at issue pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform us that this information pertains to an ongoing compliance investigation being conducted by the university. You represent release of the information at this time would interfere with, and potentially compromise, this investigation. Accordingly, we conclude the university must withhold the responsive information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.¹

Section 552.101 of the Government Code also encompasses 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, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a university medical school or health science center[.]” *Id.* § 161.031(a). The term also encompasses “a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031(b). Section 161.0315 provides in relevant part that “[t]he governing body of a . . . university medical school or health science center . . . may

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

form . . . a medical committee, as defined by section 161.031, to evaluate medical peer review committee 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 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); *Hood v. Phillips*, 554 S.W.2d 160 (Tex. 1977); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977); *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195 (Tex. App.—Corpus Christi 1993), disapproved by, *Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Doctor’s Hosp. v. West*, 765 S.W.2d 812 (Tex. App.—Houston [1st Dist.] 1988); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex. App.—Fort Worth 1988). 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 statutory predecessor to section 161.032 of the Health and Safety Code). We note that section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” Health & Safety Code § 161.032(f); *see Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to section 160.007 in section 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).

You assert that the remaining responsive information consists of records of the university’s Institutional Animal Care and Use Committee (the “IACUC”). You claim the IACUC is a medical committee and that the information at issue is confidential under section 161.032 of the Health and Safety Code as records of a medical committee. You state the IACUC is charged with certifying that all research utilizing animal subjects, or using animal derived materials, conforms to the principles and/or regulations enunciated by the university, the Texas Department of Health and Human Services, and the U.S. Department of Agriculture. Upon review, we agree the IACUC constitutes a medical peer review committee as defined by section 161.031 and conclude that the responsive information we have marked in the submitted committee minutes must be withheld under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.² *See* Health & Safety Code § 161.031(a); *see also Jordan*, 701 S.W.2d at 648 (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product).

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

In summary, the university must withhold the responsive information, which we have marked, under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code and 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 462333

Enc. Submitted documents

c: Requestor
(w/o enclosures)