



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 17, 2012

Mr. Tim Shaw  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2012-16593

Dear Mr. Shaw:

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# 468227 (OGC No. 145135).

The University of Texas System (the "system") received a request for the request and related documents submitted by a named individual to the system regarding a specified waiver. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. Additionally, you state release of this information may implicate third party interests. Accordingly, you notified Agios Pharmaceuticals, Inc., AVEO Pharmaceuticals, Inc., Eden Pharmaceuticals, Elan Pharmaceuticals, Epizyme, Inc., Karyopharm Therapeutics, Inc., and Metamark Genetics, Inc. of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have not received comments from any of the third parties explaining why the requested information should not be released. We have considered the exceptions you claim and reviewed the

submitted representative sample of information.<sup>1</sup> We have also received and considered comments from an attorney representing the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the system failed to comply with the procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e).

The requestor states the request for information was sent to the system on July 27, 2012 and argues the system failed to comply with the fifteen-business-day-deadline. The system states it received the request on July 30, 2012 and has submitted a copy of the request to our office. We note the requestor sent the present request for information by e-mail to the system's designated public information officer after business hours on July 27, 2012. *See id.* § 552.301(c) (written request made through e-mail must be sent to the governmental body's officer for public information, or the officer's designee, in order to trigger the deadlines provided by the Act). Therefore, based on the information provided to this office and our review, we consider the request to have been received by the system on July 30, 2012. Thus, the system's fifteen-business-day-deadline was August 20, 2012. Our office received the information required by section 552.301(e) from the system on August 20, 2012. Accordingly, we find the system complied with the procedural requirements under the Act, and we will consider its claimed exceptions.

Next, we note the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-14201 (2012). We have no indication the law, facts, and circumstances on which the previous ruling was based have changed. Accordingly, to the extent the requested information is identical to the information submitted in that ruling, we conclude the system must rely on Open Records Letter No. 2012-14201 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open

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<sup>1</sup>We 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.

Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the prior ruling, we consider your arguments against its release.

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 information protected by other statutes, including 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 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).

The system asserts the submitted information is made confidential by section 161.032 of the Health and Safety Code as records of a medical committee. The system states the submitted information consists of records of the Special Committee for Conflict of Interest Review (the “SCCOIR”), which is a committee created by the system and is authorized to evaluate the quality of medical and health care services offered at system health institutions. You inform us the SCCOIR operates under written bylaws approved by the system and is tasked with evaluating and making recommendations on issues relating to conflict of interest disclosures, management plans, and monitoring at these health institutions. Upon review, we agree the SCCOIR constitutes a medical committee as defined by section 161.031 of the Health and Safety Code. The system further states the submitted information consists of records, information, or reports of or provided by the SCCOIR. Thus, we agree the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup> *See* Health & Safety Code § 161.031(a).

In summary, to the extent the law, facts, and circumstances on which the previous ruling was based have not changed, the system must rely on Open Records Letter No. 2012-14201 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not encompassed by the prior ruling, the system must withhold the submitted 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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 468227

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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