



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

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

OR2012-17006

Dear Ms. English:

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# 468883 (OGC #145602).

The University of Texas Southwestern Medical Center (the "university") received a request for "all documents related to sexual misconduct allegations of any sort that were made against" a named former university fellow in nephrology. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate third party interests. Accordingly, you have notified the Department of Veterans Affairs (the "department") and Burford & Ryburn, LLP ("Burford") of the request for information and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released). As of the date of this letter, we have not received comments from the department or Burford explaining why the requested information should not be released. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's attorney. *See id.* § 552.304.

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, such as 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 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).

You inform us that the submitted information consists of records of the university's Nephrology Fellowship Committee (the "NFC"). You assert that the NFC is a medical committee and the submitted information is confidential under section 161.032 of the Health and Safety Code as records of a medical committee. You state that the NFC is the university's committee "that ensures that the [Accreditation Council for Graduate Medical Education] standards for nephrology fellowship are followed, and that the fellows meet the required benchmarks for graduation." Based on your representations and our review, we agree the NFC constitutes a medical committee as defined by section 161.031 of the Health and Safety Code. You state the submitted information was created by or at the direction of the NFC for committee purposes. Accordingly, the university must withhold the NFC records we have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. However, we note a portion of the submitted information was submitted to the university by the department, and pertains to an investigation conducted by the department. Further, we note the information at issue includes e-mails from the former nephrology fellow, as well as a written reprimand letter addressed to the fellow that reflects it will become part of the fellow's permanent file. Therefore, we find you have failed to demonstrate how this information was not created in the regular course of business. See *McCown*, 927 S.W.2d at 10 (regular course of business means "records kept in connection with the treatment of . . . individual patients as well as the business and administrative files and papers apart from committee deliberations" and privilege does not prevent discovery of material presented to hospital committee if otherwise available and "offered or proved by means apart from the record of the committee." (quoting *Texarkana Memorial Hosp.*, 551 S.W.2d at 35-6)). Thus, we find you have not established the remaining information at issue is confidential under section 161.032, and the university may not withhold it under section 552.101 on that basis.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See *Open Records Decision No. 530* at 5 (1989). Thus, information may be withheld under

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See *Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024, and the cellular service and pager service are not paid for by a governmental body, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the email address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we marked, must be withheld under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.² *See id.* § 552.137(b).

In summary, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Occupations Code. To the extent the employees whose personal information is at issue timely requested confidentiality under section 552.024 of the Government Code, and the cellular telephone service and pager service are not paid for by a governmental body, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining information must be released.

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.

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 468883

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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