



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2012

Ms. Melissa V. Garcia
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-18254

Dear Ms. Garcia:

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# 471165 (OGC# 146048).

The University of Texas Southwestern Medical Center (the "university") received a request for twenty-four categories of information pertaining to a named individual.¹ You state some information will be released. You claim a portion of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.117, 552.1235, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the requestor has agreed to the redaction of the individual's social security number, date of birth, medical records, personal phone numbers and addresses, relative's information, and bank or other financial account information. Therefore, any such information within the submitted documents is not responsive to the instant request and we do not address it.

²We assume the "representative sample" of information 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.

Initially, we note the requestor has excluded the named individual's social security number, home telephone number and address, and information about the named individual's relatives from the scope of her request. Thus, those types of information are not responsive to the request. This request does not address the public availability of any such information, and the university need not release any such information in response to this request.³

Next, we address your argument that portions of the submitted information are not subject to the Act. You contend that, pursuant to section 181.006 of the Health and Safety Code, the information you have marked is not subject to the Act. Section 181.006 states that: [f]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Subsection 181.006(2) does not remove protected health information from the Act's application, but rather states this information is "not public information and is not subject to disclosure under [the Act]." We interpret this to mean a covered entity's protected health information is subject to the Act's application. Furthermore, this statute, when demonstrated to be applicable, makes confidential the information it covers. Thus, we will consider your arguments for this information, as well as the other submitted information.

Section 552.101 of the Government Code exempts 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 . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital . . . are not subject to disclosure under Chapter 552, Government Code.

...

³As we are able to make this determination, we need not address your argument against disclosure of this information.

(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). Section 161.031(a) defines a “medical committee” as “any committee . . . of (3) a university medical school or health science center[.]” *Id.* § 161.031(a)(3). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] university medical school or health science center . . . 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).

You state the university established the Parkland Health and Hospital System Credentials Committee to determine whether particular health care providers may be given privileges and credentials to provide services at the Parkland Health and Hospital System. You state the Promotion and Tenure Committee considers recommendations from departmental chairpersons regarding faculty promotions and awards of tenure for all university faculty. You state the Conflict of Interest Committee considers faculty requests to accept outside employment. Finally, you state the Professional Liability Committee reviews and investigates claims involving potential medical malpractice liability against university faculty. Thus, we agree these committees are “medical committees” under section 161.031. You state the information you have marked was submitted to and obtained by university medical committees for the purposes of assessing the professional skill and care of physicians. Upon review, we find the information you have marked was prepared at the direction of the named committees and for committee purposes. Accordingly, the university must withhold the information you have marked under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.⁴

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 181.006 of the Health and Safety Code. As noted above, section 181.006 states that “[f]or a covered entity that is a governmental unit, an individual’s protected health information . . . is not public information and is not subject to disclosure under [the Act].” Health & Safety Code § 181.006. Section 181.001(b)(2) defines “[c]overed entity,” in part, as “any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2). You inform us the university’s privacy policy demonstrates that it is a covered entity. You indicate the university maintains health information for the individuals it serves, including information showing that an individual received medical care from the university. You indicate the information collected, used, and stored by the university consists of protected health information. Thus, you claim the university is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether the university is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether the university engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states that “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [“HIPAA”].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

- ...
- (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual[.]

45 C.F.R. § 160.103. You state the information you have marked pertains to the provision of health care to individuals by the named individual, a university physician. Accordingly, we conclude the documents in question contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the submitted information contains protected health information for purposes of section 181.006 of the Health and Safety Code. You also indicate these documents were collected, assembled, used, or stored by the university. Therefore, with respect to these documents, the university is a health care entity that is in the practice of collecting, assembling, using, and storing protected health information. Thus, the university is a covered entity for purposes of section 181.006. Accordingly, the university must withhold the protected health information we have marked under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code. We conclude the remaining information in these documents is not confidential under section 181.006 and may not be withheld on that basis under section 552.101.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the personal financial information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law

privacy.⁵ We find the remaining information is not highly intimate or embarrassing information of no legitimate public concern. Accordingly, it may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to any portion of the remaining information. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."⁶ Gov't Code § 552.102(a). The Texas Supreme Court held that section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. 2010). Upon review, we conclude the university must withhold the birth date we have marked in the remaining information under section 552.102(a) of the Government Code.

Section 552.1235 of the Government Code excepts from disclosure "[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). "Institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an "institution of higher education" as "any public technical institute, public junior college,

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁶The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” *See* Educ. Code § 61.003.

You seek to withhold portions of the remaining information under section 552.1235. You state the information you have marked pertains to individuals who are university donors and who have not given the university permission to release their names and other identifying information. Based upon your representations and our review, we agree the portions of the remaining information we have marked identify persons who are donors to the university. Accordingly, we conclude the university must withhold the information we have marked under section 552.1235 of the Government Code. The remaining information you have marked, however, does not identify or tend to identify donors to the university. Thus, none of the remaining information is confidential under section 552.1235 and it may not be withheld on that basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.⁷ Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country[.]” *See* Gov’t Code § 552.130(a)(1)-(2). Therefore, we find the university must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the birth date we have marked under section 552.102(a) of the Government Code. The university must withhold the information we have marked under section 552.1235 of the Government Code. The university must also withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.

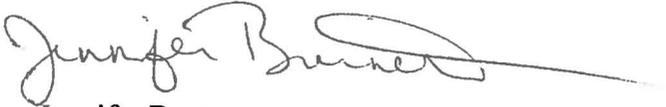
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script that reads "Jennifer Burnett". The signature is written in black ink and extends across the width of the page.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 471165

Enc. Submitted documents

c: Requestor
(w/o enclosures)