



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2013

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

OR2013-13492

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# 495308 (OCG No. 150091).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for information pertaining to the Surfactant Positive Airway Pressure and Pulse Oximetry Trial (the "SUPPORT study"), including: (1) applications for review, continuing review, and amendment review submitted to the university's Institutional Review Board (the "IRB"); (2) minutes of any IRB meetings related to the initial and continuing review of the SUPPORT study and the review of any amendments to the support study; (3) applications or the initial review, continuing review, and amendment for the Transfusion of Prematures Trial (the "TOP trial") submitted to the IRB; (4) all versions of the consent and parental permission forms for the TOP trial approved by the IRB; and (5) minutes of any IRB meetings related to the initial and continuing review of the TOP trial and the review of any amendments to the TOP trial. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have

considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 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, medical peer review committee, . . . and records, information, or reports provided by a medical committee, medical peer review committee, . . . to the governing body of a public hospital . . . 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) (footnote omitted). 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 “[t]he governing body of a hospital [or] university medical school or health science center . . . may form . . . a medical peer review committee, as defined by Section 151.002, Occupations Code, or 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 “documents

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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 that those records contain substantially different types of information than that submitted to this office.

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,” but does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” See *Jordan*, 701 S.W.2d at 647-48; see also Open Records Decision No. 591 (1991) (construing statutory predecessor to Health and Safety Code § 161.032). Further, 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 also *McCown*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 of the Health and Safety Code is clear signal 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.

The university asserts the submitted information consists of records prepared for or at the direction of the IRB. The university states the IRB is a medical committee established pursuant to federal law in order “to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving human subjects.”<sup>2</sup> 21 C.F.R. § 56.102(g). We have previously found, on multiple occasions, the university’s IRB is a medical committee for purposes of section 161.032. The university explains this committee is charged with “reviewing and approving research involving human subjects” at the university’s hospital and other affiliated hospitals.<sup>3</sup> Based on these representations and our review, we conclude the university 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.<sup>4</sup>

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<sup>2</sup>See 42 U.S.C. § 289(a) (providing that Secretary of Health and Human Services shall by regulation require that each entity which applies for grant, contract, or cooperative agreement for any project or program which involves conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to Secretary that it has established “Institutional Review Board” to review biomedical and behavioral research involving human subjects conducted at or supported by such entity).

<sup>3</sup>The university informs us that, pursuant to a Master Services Agreement between the Dallas County Hospital District d/b/a Parkland Health & Hospital System (the “district”) and the university, the university contracts its employed faculty physicians to provide medical services to the district’s patients, supervise resident physicians, and provide medical directorship and other administrative services for the various clinical departments at district facilities.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/som

Ref: ID# 495308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)