



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

This ruling has been modified by court action  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 10, 2014

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

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2014-00656

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# 510543 (OGC# 152654).

The University of Texas Southwestern Medical Center (the "university") received a request for all records pertaining to a named individual. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.111 of the Government Code. Additionally, you state, and provide documentation showing, you notified Parkland Health & Hospital System ("Parkland"), the Texas Medical Board (the "board"), and TMF Health Quality Institute ("TMF") of the request for information and of the right of each to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Parkland, the board, and TMF. We have reviewed the submitted arguments and the submitted representative sample of information.<sup>1</sup> We have also received

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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 that submitted to this office.

and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the university has marked information that is not responsive to the request for information because it does not pertain to the individual named in the request and the requested categories of information. Additionally, the requestor excludes patient medical records, social security numbers, personal banking information, personal phone numbers and addresses, and information about relatives from the scope of the request. Although you inform us the university will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, we note these types of information are not responsive to the request for information.<sup>2</sup> This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release such information in response to this request.

The university argues portions of the responsive information are not subject to the Act pursuant to section 181.006 of the Health and Safety Code. Section 181.006 states “[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(2). We will assume, without deciding, the university is a covered entity. Section 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 the other submitted arguments for the remaining information.

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 made confidential by other statutes, such as section 161.032 of the Health and Safety Code. Section 161.032 of the Health and Safety Code addresses the broad category of medical committees and provides in relevant part:

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<sup>2</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov’t Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

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

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.

You state some of the responsive documents, which you have marked, were created by or for medical committees of the university. You state the Peer Review Committee conducts peer reviews for quality assurance purposes and to ensure that the standards of care are met, assesses the qualifications of faculty, and tracks faculty performance, and makes recommendations to the Promotions and Tenure Committee and provides information to the Credentialing and Privileges Committee. You inform us the Promotion and Tenure Committee considers recommendations from university administration regarding faculty promotions and awards of tenure for university faculty, and as part of this process, reviews a variety of documents in making its decisions. You explain the Credentialing and Privileges Committee makes recommendations to the Medical Services Research and Development Board and the University Hospital Board regarding “whether particular health care providers may be given privileges and credentials to provide services at the [u]niversity’s hospitals,” including its affiliate hospital Parkland. You inform us the Professional Liability Advisory Committee is charged with reviewing, evaluating, and investigating claims involving potential medical malpractice liability against the university, faculty, and staff, and assists with the investigation, evaluation, and defense of professional licensing board complaints against university providers. Finally, you state the university created an *ad hoc* committee to evaluate and recommend proposed physicians to university professorships. We agree each of these committees is a “medical committee” for purposes of section 161.031. You inform us the information you marked was prepared at the direction of the named university committees and for committee purposes. Upon review, we conclude the university must withhold the responsive information you marked under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.<sup>3</sup>

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See Open Records Decision No. 676* at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *See TEX. R. EVID. 503(b)(1)*. The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding)

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<sup>3</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

(attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state most of the remaining responsive information, which you have marked, consists of communications involving attorneys for the university and university employees in their capacities as clients. You also explain portions of the communications at issue are between university attorneys and Parkland. You state the university and Parkland share a common legal interest with respect to the information at issue. You state these communications were made in furtherance of the rendition of professional legal services to the university. You state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to most of the information you have marked. However, upon review, we find some of the information at issue was shared with the board, which you have not demonstrated to be a privileged party. Therefore, you have failed to establish how that information constitutes privileged attorney-client communications for the purposes of section 552.107(1), and the university may not withhold that information under section 552.107. Accordingly, except for the non-privileged information that was shared with the board, the university may withhold the remaining responsive information you marked under section 552.107(1) of the Government Code.<sup>4</sup>

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<sup>4</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You state the remaining responsive information at issue reflects the deliberative process by which employees and officials at the university recommend changes involving policy issues.

However, as noted above, the remaining responsive information has been shared with the board, with which you have not demonstrated the university shares a privity of interest. Thus, we find you have failed to show how the remaining information at issue consists of internal communications on policymaking matters of the university. Accordingly, the remaining responsive information may not be withheld under section 552.111 of the Government Code.

The university and the board assert the remaining information is confidential under section 164.007 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 164.007(c) provides:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). The information at issue consists of information created by or provided to the board relating to a licensed physician. The board argues the information at issue is confidential under section 164.007(c) because the information is part of the board's investigative file regarding the named individual. By its terms, section 164.007(c) makes information confidential when in the possession of the board, its employees, or agents. In this instance, however, the information at issue is in the possession of the university. Furthermore, the university is not acting as an employee or agent of the board in maintaining these records. Therefore, we conclude section 164.007(c) does not make the information at issue confidential in this instance. Consequently, the university may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code.

The university and the board also claim the remaining information is subject to section 160.006 of the Occupations Code, which provides in relevant part:

(a) A record, report, or other information received and maintained by the board under [Subchapter A] or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential.

*Id.* § 160.006(a). By its terms, section 160.006(a) makes information confidential if it is maintained by the board. The board argues some of the remaining information was developed by the board and is contained in its investigative files. However, we note the information at issue is maintained by the university. Accordingly, we conclude none of the remaining information is confidential under section 160.006(a). Thus, the university may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), which governs access to medical records. Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. The information we have marked consists of information obtained from medical records. The university must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the university may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered

intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing, *see* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy 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 that 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)). After review of the remaining information at issue, we find you have failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

In summary, the university must withhold the responsive information you marked under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. Except for the submitted non-privileged information, the university may withhold the responsive information you marked under section 552.107(1) of the Government Code. The university must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA and common-law privacy. The remaining responsive information, which we marked, 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 responsibilities, please visit our website at <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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 510543

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Thao La  
Senior Attorney  
Parkland Health & Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235  
(w/o enclosures)

Mr. Robert J. Blech  
Assistant General Counsel  
Texas Medical Board  
P.O. Box 2018  
Austin, Texas 78768-2018  
(w/o enclosures)

Mr. Walter J. Batla  
Dodd & Batla  
3811 Bee Caves Road, Suite 105  
Austin, Texas 78746  
(w/o enclosures)

Filed in The District Court  
of Travis County, Texas

DEC 29 2014

At 1:53pm M.  
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GN-14-000444

UNIVERSITY OF TEXAS	§	IN THE DISTRICT COURT OF
SOUTHWESTERN MEDICAL CENTER,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	419 <sup>th</sup> JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the University of Texas Southwestern Medical Center (UTSW), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, University of Texas Southwestern Medical School at Dallas (UT Southwestern), and Defendant, Greg Abbott, Attorney General of Texas (the Attorney General), arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Miles Moffeit, on December 5, 2014, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that UT Southwestern must withhold the information at issue. The requestor was also informed of his right to intervene in the

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1 of 11

suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this judgment as Exhibit "B."

The requestor has not filed a motion to intervene.

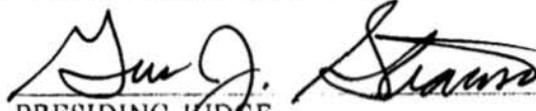
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

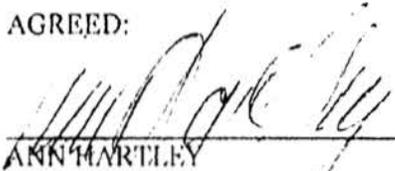
1. The information at issue in this lawsuit, specifically the 4 pages of information identified by UT Southwestern, is confidential pursuant to Texas Government Code section 552.101 in conjunction with section 164.007(c) of the Occupations Code. These pages must be withheld. In addition, pages marked by the Open Records Division during the letter ruling phase of the process remain excepted from disclosure pursuant to Letter Ruling OR2014-00656.
2. UT Southwestern must withhold from the requestor the information described in Paragraph 1 of this order and must comply with the letter ruling in all other respects.
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between UT Southwestern and the Attorney General and is a final judgment.

D-1-GN-14-000444

SIGNED the 29<sup>th</sup> day of December, 2014.

  
PRESIDING JUDGE

AGREED:



ANN HARTLEY  
State Bar No. 09157700  
Assistant Attorney General  
Financial Litigation, Tax, and  
Charitable Trusts Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 936-1313  
Facsimile: (512) 477-2348  
ann.hartley@texasattorneygeneral.gov

Attorney for UT Southwestern



KIMBERLY FUCHS  
State Bar No. 24044140  
Chief, Open Records Litigation  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4195  
Facsimile: (512) 320-0167  
kimberly.fuchs@texasattorneygeneral.gov

Attorney for the Attorney General

**A**

Cause No. D-1-GN-14-000444

UNIVERSITY OF TEXAS	§	IN THE DISTRICT COURT OF
SOUTHWESTERN MEDICAL CENTER,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	419th JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

### **SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is made by and between the University of Texas Southwestern Medical School (UT Southwestern) and Greg Abbott, Attorney General of Texas. This Agreement is made on the terms set forth below.

### **Background**

On October 12, 2013, UT Southwestern received a written request for information from Mr. Miles Moffeit of the Dallas Morning News under the Public Information Act (PIA). The request was for information regarding a specified physician. The responsive information included documents generated by UT Southwestern which other interested parties considered confidential investigative material.

UT Southwestern asked for an open records ruling from the Attorney General, pursuant to the PIA, Tex. Govt. Code Section 552.301.

The Attorney General issued Letter Ruling OR2014-00656 (2014) in response to UT Southwestern's request. The ruling concluded, in pertinent part, that UT Southwestern had established that some of the information must be withheld, but ordered UT Southwestern to disclose other information.

Settlement Agreement  
Cause No. Cause No. D-1-GN-14-000444

UT Southwestern disputed the ruling and filed a lawsuit, styled Cause No. D-1-GN-14-000444, *The University of Texas Southwestern Medical Center v. Greg Abbott, Attorney General of Texas*, in the 419th Judicial District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. Specifically, UTSW argued that some of the documents were confidential under Texas Government Code section 552.101 in conjunction with section 164.007(c) of the Occupations Code.

UT Southwestern, along with other interested parties, submitted additional information to the Attorney General explaining how 164.007(c) of the Occupations Code applies to the information at issue. The Attorney General now agrees that UT Southwestern has established that the section does apply.

Tex. Govt. Code Section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

### **Terms**

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Portions of the information at issue, specifically the 4 pages of information identified by UT Southwestern, are confidential pursuant to Texas Government Code section 552.101 in conjunction with section 164.007(c) of the Occupations Code. These pages must be withheld in addition to the redactions marked by the Open Records Division during the letter ruling phase of the process.

2. UT Southwestern must withhold from the requestor the information described in Paragraph 1 of this Agreement.

3. UT Southwestern and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A".

4. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest UT Southwestern's right to withhold the information.

5. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

6. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

8. UT Southwestern warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release

of all claims that it has against the Attorney General arising out of the matters described in this Agreement.

9. UT Southwestern warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that UT Southwestern has against the Attorney General arising out of the matters described in this Agreement.

10. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against UT Southwestern arising out of the matters described in this Agreement.

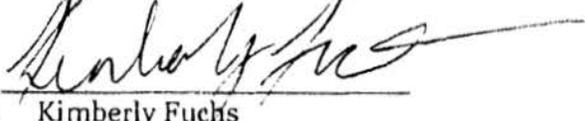
11. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL CENTER

By:   
Name: Ann Hartley  
Title: AAG, Financial Litigation, Tax,  
and Charitable Trusts Division

Date: December 4, 2014

GREG ABBOTT,  
ATTORNEY GENERAL OF TEXAS

By:   
Name: Kimberly Fuchs  
Title: AAG, Administrative Law

Date: December 5, 2014

DEC 29 2014

At 1:44pm M. Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GN-14-000363

TEXAS MEDICAL BOARD,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	126th JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS, AND UNIVERSITY OF	§	
TEXAS SOUTHWESTERN MEDICAL	§	
CENTER AT DALLAS,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the Texas Medical Board (TMB), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, TMB and Defendants University of Texas Southwestern Medical School at Dallas (UT Southwestern), and Greg Abbott, Attorney General of Texas (the Attorney General), arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Miles Moffeit, on December 5, 2014, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that UT Southwestern must withhold four pages of the information at issue. The requestor was also informed of his right to intervene in

OK

the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this judgment as Exhibit "B."

The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The information at issue in this lawsuit, specifically the 4 pages of information identified by TMB and UT Southwestern, is confidential pursuant to Texas Government Code section 552.101 in conjunction with section 164.007(c) of the Occupations Code. These pages must be withheld. In addition, pages marked by the Open Records Division during the letter ruling phase of the process remain excepted from disclosure pursuant to Letter Ruling OR2014-00656.

2. UT Southwestern must withhold from the requestor the information described in Paragraph 1 of this order and must comply with the letter ruling in all other respects.

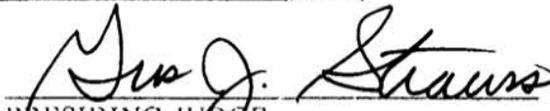
3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between TMB, UT Southwestern, and the Attorney General and is a final judgment.

D-1-GN-14-000363

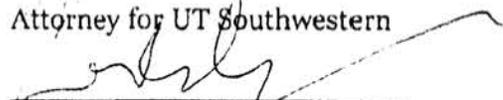
SIGNED the 29<sup>th</sup> day of December, 2014.

  
 \_\_\_\_\_  
 PRESIDING JUDGE

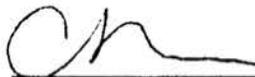
AGREED:

  
 \_\_\_\_\_  
 ANN HARTLEY  
 State Bar No. 09157700  
 Assistant Attorney General  
 Financial Litigation, Tax, and  
 Charitable Trusts Division  
 P.O. Box 12548  
 Austin, Texas 78711-2548  
 Telephone: (512) 936-1313  
 Facsimile: (512) 477-2348  
 ann.hartley@texasattorneygeneral.gov

Attorney for UT Southwestern

  
 \_\_\_\_\_  
 KIMBERLY FUCHS  
 State Bar No. 24044140  
 Chief, Open Records Litigation  
 Administrative Law Division  
 P.O. Box 12548, Capitol Station  
 Austin, Texas 78711-2548  
 Telephone: (512) 475-4195  
 Facsimile: (512) 320-0167  
 kimberly.fuchs@texasattorneygeneral.gov

Attorney for the Attorney General

  
 \_\_\_\_\_  
 CYNTHIA A. MORALES  
 State Bar No. 14417420  
 Assistant Attorney General  
 Financial Litigation, Tax, and  
 Charitable Trusts Division  
 P.O. Box 12548  
 Austin, Texas 78711-2548  
 Telephone: (512) 475-4470  
 Facsimile: (512) 477-2348  
 cynthia.morales@texasattorneygeneral.gov

ATTORNEY FOR TMB

**A**

Cause No. D-1-GN-14-000363

TEXAS MEDICAL BOARD,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	126th JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS, AND UNIVERSITY OF	§	
TEXAS SOUTHWESTERN MEDICAL	§	
CENTER AT DALLAS,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is made by and between the Texas Medical Board (TMB), the University of Texas Southwestern Medical School at Dallas (UT Southwestern) and Greg Abbott, Attorney General of Texas. This Agreement is made on the terms set forth below.

**Background**

On October 14, 2013, UT Southwestern received a written request for information from Mr. Miles Moffeit of the Dallas Morning News under the Public Information Act (PIA). The request was for information regarding a specified physician. The responsive information included documents generated by UT Southwestern which TMB considers confidential investigative material.

UT Southwestern asked for an open records ruling from the Attorney General, pursuant to the PIA, Tex. Govt. Code Section 552.301.

The Attorney General issued Letter Ruling OR2014-00656 (2014) in response to UT Southwestern's request. The ruling concluded, in pertinent part, that UT

Southwestern had established that some of the information must be withheld, but ordered UT Southwestern to disclose other information, including the TMB information.

TMB disputed the ruling and filed a lawsuit, styled Cause No. D-1-GN-14-000363, *Texas Medical Board v. The University of Texas Southwestern Medical Center and Greg Abbott, Attorney General of Texas*, in the 126th Judicial District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. Specifically, TMB argued that some of the documents were confidential under Texas Government Code section 552.101 in conjunction with section 164.007(c) of the Occupations Code.

TMB and UT Southwestern submitted additional information to the Attorney General explaining how 164.007(c) of the Occupations Code applies to the information at issue. The Attorney General now agrees that TMB and UT Southwestern have established that the section does apply.

Tex. Govt. Code Section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

### **Terms**

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Portions of the information at issue, specifically the 4 pages of information identified by TMB and UT Southwestern, are confidential pursuant to Texas Government Code section 552.101 in conjunction with section 164.007(c) of the Occupations Code. These pages must be withheld in addition to the redactions marked by the Open Records

Division during the letter ruling phase of the process.

2. UT Southwestern must withhold from the requestor the information described in Paragraph 1 of this Agreement.

3. TMB, UT Southwestern, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A".

4. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest TMB and UT Southwestern's right to withhold the information.

5. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

6. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

8. TMB warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that

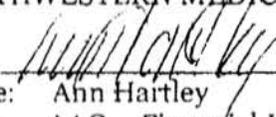
TMB has against the Attorney General and UT Southwestern arising out of the matters described in this Agreement.

9. UT Southwestern warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that UT Southwestern has against the Attorney General and TMB arising out of the matters described in this Agreement.

10. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against TMB and UT Southwestern arising out of the matters described in this Agreement.

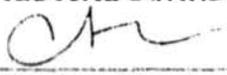
11. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

UNIVERSITY OF TEXAS  
SOUTHWESTERN MEDICAL CENTER

By:   
Name: Ann Hartley  
Title: AAG, Financial Litigation, Tax,  
and Charitable Trusts Division

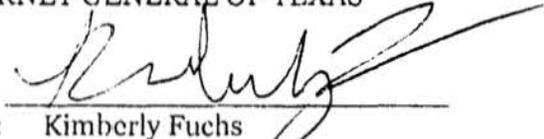
Date: Dec. 25, 2014

TEXAS MEDICAL BOARD

By:   
Name: Cynthia Morales  
Title: AAG, Financial Litigation, Tax,  
and Charitable Trusts Division

Date: 11-25-14

GREG ABBOTT,  
ATTORNEY GENERAL OF TEXAS

By:   
Name: Kimberly Fuchs  
Title: AAG, Administrative Law  
Division

Date: December 4, 2014