



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2016

Ms. Jennifer Burnett
Office of General Counsel
University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701-2901

OR2016-12955

Dear Ms. Burnett:

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# 613081 (OGC# 168414 and 168832).

The University of Texas Health Science Center at Houston (the "university") received two requests for information concerning the Faculty Recruitment Task Force (the "task force"). You state the university does not maintain information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

²We 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.

You have marked a portion of the submitted information as not responsive to the request. This ruling does not address the public release of information that is not responsive to a request, and the university is not required to release non-responsive 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 section 161.032 of the Health and Safety Code, which provides:

(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 . . . are not subject to disclosure under [the Act].

Health & Safety Code § 161.032(a), (c). A “medical committee” is any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See 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). The governing body of a university medical school or health science center may form a medical committee 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 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, and the “privilege 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 things, statutory predecessor to section 161.032).

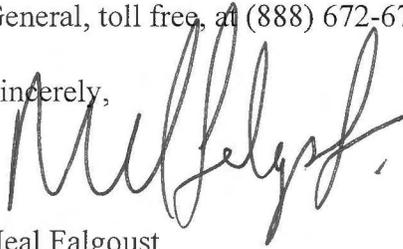
You state the submitted information consists of documents created by the task force, which is an *ad hoc* committee that includes members from the university’s six schools, including a member from the medical school. You state the task force was created to evaluate the processes related to faculty recruiting, which will have a direct effect on the medical and health care provided by the university. Upon review, we find you have demonstrated the task force is a “medical committee” for purposes of section 161.032 of the Health and Safety

Code. Accordingly, the university must withhold the requested 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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 613081

Enc. Submitted documents

c: Requestor
(w/o enclosures)