



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 13, 2012

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

OR2012-00730

Dear Ms. Chatterjee:

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# 442384 (OGC 140624).

The University of Texas Health Science Center at San Antonio (the "university") received a request for copies of the agenda and meeting minutes for the "Committee on Human Research" during a specified period of time and copies of any contracts executed with "Roche", Johnson & Johnson, GlaxoSmithKline, Abbott, Merck, Wyeth, Eli Lilly, Teva, Bristol Myers Squibb, Novartis, and AstraZeneca regarding drug or product development since a specified date. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You further state release of the submitted information may implicate the proprietary interests of third parties. Accordingly the university notified Hoffmann-LaRoche, Inc. ("LaRoche"); Eli Lilly and Company ("Eli Lilly"); and Merck Sharpe & Dohme Research Ltd. ("Merck") of the request for information and of their rights to submit arguments to this office as to why the information should or should not be released. *See Gov't Code* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from LaRoche. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See Gov't*

---

<sup>1</sup>We assume the "representative sample" of records submitted to this office are 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.

Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Eli Lilly or Merck explaining why the submitted information should not be released. Therefore, we have no basis to conclude that Eli Lilly or Merck have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any portion of the submitted information based upon the proprietary interests of Eli Lilly or Merck.

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, 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 state the information submitted as Exhibit 6 and portions of the information submitted as Exhibit 7 consist of records prepared for or at the direction of the university’s Institutional Review Board (“IRB”). We have previously found, on multiple occasions, the university’s IRB is a medical committee for purposes of section 161.032. You explain this committee is charged with “reviewing and approving research involving human subjects at [the university].” Based on your representations and our review of the information at issue, we conclude the university must withhold Exhibit 6 and the information you have marked in Exhibit 7 under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup> We address LaRoche’s argument for the remaining information.

LaRoche raises section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; ORD 661 at 5-6.

---

<sup>2</sup>As our ruling for this information is dispositive, we need not address the remaining arguments against disclosure for this information.

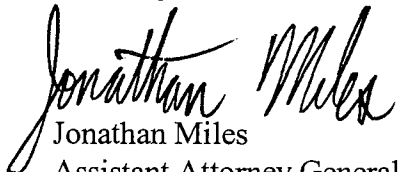
LaRoche asserts its submitted budgetary and financial information constitutes commercial and financial information that, if released, would cause the company substantial competitive harm. Upon review, however, we find LaRoche has made only general conclusory assertions that release of this information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See generally* Open Records Decision Nos. 661, 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the university may not withhold any of the remaining information under section 552.110(b) of the Government Code.

In summary, the university must withhold Exhibit 6 and the information you have marked in Exhibit 7 under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. 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.

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](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,

  
Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 442384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Barbara E. Boone  
Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, Indiana 46285  
(w/o enclosures)

Merck Sharpe & Dohme Research Ltd.  
Chesney House  
96 Pitts Bay Road  
Pembroke HM 08, Bermuda  
(w/o enclosures)

Ms. Maria Smith  
Hoffmann-Laroche, Inc.  
340 Kingsland Street  
Nutley, New Jersey 07110  
(w/o enclosures)

