



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-13133

Dear Ms. Ayala:

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# 568128 (OGC# 160964).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information pertaining to nonhuman primates as well as completed application forms in regard to a specified conference.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

¹We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W 3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section 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, 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).

The university states a portion of the submitted information, which you have marked, consists of records of the Institutional Animal Care Use Committee (the "IACUC"). The university informs us the IACUC is a medical committee charged with certifying all research utilizing animal subjects, or using animal derived materials, conforms to principles and/or regulations enunciated by the university, Texas health agencies, and the United States Department of Agriculture. Based upon your representations, we agree this committee is a "medical committee" for purposes of section 161.031 and conclude 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.

You seek to withhold the submitted primate behavioral management conference applications under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, No. 12-1007, slip op. at 17 (Tex. June 19, 2015). You assert the university has organized and hosted many workshops throughout the years which have, in turn, helped position the university as experts and leaders in the field of primate research and behavioral management. You state the university has specific marketplace interests in the information at issue because the university competes with other research institutions with regards to similar workshops and release of the conference applications could hamper the university's ability to recruit future attendees. In addition, the university states if the information at issue is released, the university's ability to compete with other research institutions would be at a significant disadvantage as attendees would elect to attend workshops produced by competitors. After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted conference applications under section 552.104(a).²

In summary, 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. The university may withhold the submitted conference applications under section 552.104(a) of the Government 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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 568128

Enc. Submitted documents

c: Requestor
(w/o enclosures)