



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 9, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2016-25021

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# 633662 (UT OGC# 171466).

The University of Texas Southwestern Medical Center (the "university") received a request for all records pertaining to a named employee. You inform us you will release some information to the requestor. You state 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.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Children's Medical Center of Dallas d/b/a Children's Health ("CMCD") and Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* §§ 552.304 (interested party may submit comments stating why information

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<sup>1</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).

should or should not be released), .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 CMCD and Parkland. We have reviewed the submitted representative sample of information and the submitted arguments.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304.

Initially, we address CMCD's assertion that its submitted information is not subject to the Act. The Act is applicable only to "public information." *See id.* §§ 552.002, .021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002. Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988).

CMCD states it is a private, not-for-profit corporation that specializes in the delivery of health care services to children. CMCD further states it is not part of the university or the University of Texas System. CMCD states the physician at issue was employed by the

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<sup>2</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.

university but also held hospital privileges at CMCD. CMCD explains the records at issue were generated in connection with the medical and peer review of the physician at issue pursuant to CMCD's Medical/Dental Staff Bylaws. CMCD further explains none of the documents were "collected, assembled, or maintained for [the university's] purposes." However, we note CMCD's information is maintained by the university in furtherance of official business or a government function. Further, the university has submitted this information as being subject to the Act. Accordingly, we find this information was collected, assembled, or maintained in connection with the transaction of the university's official business. Therefore, we conclude the information at issue is subject to the Act and the university must release it unless the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Accordingly, we will consider the claimed exceptions for CMCD's information.

Next, we note some of the remaining information is not responsive to the instant request because it does not pertain to the named employee. This ruling does not address the public availability of the non-responsive information, which we have indicated, and the university need not release it in response to the request.

Additionally, we note CMCD and Parkland argue against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the university has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for 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." *Id.* § 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:

(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 information you marked was 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, tracks faculty performance, 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 Executive Committee and the Hospital Board regarding “whether particular health care providers may be given privileges and credentials to provide services at the [u]niversity’s hospitals.” You also inform us the Conflict of Interest Committee is charged with identifying and reviewing conflict of interest issues, developing management plans for potential conflicts of interest, and monitoring compliance with those plans. We agree each of these committees is a “medical committee” for purposes of section 161.031. You inform us the information at issue was prepared at the direction of the named university committees and for committee purposes. Upon review, we conclude the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

CMCD and Parkland also argue their information is made confidential by section 161.032 of the Health and Safety Code as records of a medical committee. CMCD explains its information at issue was requested and generated for CMCD medical and peer review committees, was prepared at the direction of the committees, and was not gratuitously submitted to the committees. Further, CMCD states this information was “requested, created, and obtained for the CMCD medical and peer review committees deliberative proceedings to evaluate the quality of medical and health care services and/or the qualifications of professional health care practitioners and of patient care rendered by those practitioners.” Parkland explains its information at issue was prepared or collected by Parkland’s Credentialing Committee, Peer Review Oversight Committee, Medical Executive Committee, and Board of Managers as a part of their review and evaluation of professional health care practitioners. Parkland states this information was prepared and collected in a sequence of activity wholly within the purview of duly established medical committees. Additionally, Parkland states this information was “not prepared in the regular course of business, but reflect[s] the deliberative processes of identifying and/or reacting to issues that affect patient safety and quality of services provided by [Parkland], and ultimately remedying and/or preventing such issues.” Based on these representations and our review, we conclude the university must withhold CMCD’s and Parkland’s information, which we have indicated, under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses federal law such as the Family and Medical Leave Act (the “FMLA”). *See* 29 U.S.C. §§ 2601 *et. seq.* Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to certifications, recertifications or medical histories of employees or employees’ family members, created for purposes

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<sup>3</sup>As our ruling is dispositive, we need not address CMCD’s and Parkland’s remaining arguments against disclosure of their information.

of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the [Americans with Disabilities Act (the "ADA")], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). We note some of the information you marked is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find none of the release provisions of the FMLA apply to this information. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with the FMLA.

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the information you marked and the information we have indicated under section 552.101 in conjunction with section 161.032 of the Health

and Safety Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with the FMLA. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining responsive information.

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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/som

Ref: ID# 633662

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)