



**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 7<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2901

OR2016-25025

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# 633660 (OGC# 171465).

The University of Texas Southwestern Medical Center (the "university") received a request for all records pertaining to a named faculty member. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the interests of Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") and Children's Medical Center of Dallas d/b/a Children's Health ("CMCD"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right 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 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 Parkland and CMCD. We have also received and considered comments from the requestor. *See Gov't Code § 552.304.* We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor excluded from the request the named faculty member's social security number, personal banking information, personal telephone numbers, personal addresses, and patient identities. Accordingly, this type of information is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the university is not required to release non-responsive information in response to this request.

Next, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-24873 (2016). In Open Records Letter No. 2016-24873, we determined the university, with the exception of the information subject to section 552.022 and the information we marked for release, may withhold the information it marked under section 552.103; must withhold the information it marked and we marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code and section 161.032 of the Health and Safety Code; must withhold the information we marked under section 552.102(a) of the Government Code; must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; must withhold the information we marked under section 552.117(a)(1) of the Government Code to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; must withhold the information we have marked under section 552.136 of the Government Code; must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and must release the remaining responsive information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the university must continue to rely on Open Records Letter No. 2016-24873 as a previous determination and withhold the information at issue, which we have indicated, in accordance with that ruling.<sup>1</sup> *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination).

We note Parkland argues against disclosure of information the university did not submit 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.

CMCD asserts that its 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

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<sup>1</sup>As our ruling is dispositive, we need not address the university's arguments against disclosure of this information.

[I]nformation 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 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, the university maintains CMCD's information in furtherance of its official business. 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.

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 information protected by other statutes, such as section 51.971 of the Education Code, which provides, in relevant part:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). We understand the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The

university states the information it has marked pertains to a completed investigation undertaken by the university's Title IX Coordinator and the investigation is closed. The university states the investigation was conducted in response to an allegation of sexual harassment against a university employee and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on these representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

The university seeks to withhold the information at issue in its entirety. The university claims only a small subset of individuals were involved in the investigation, and the requestor is familiar with this small group of individuals. Accordingly, the university asserts release of the information at issue would directly or indirectly identify the individuals seeking guidance from or participating in the compliance program investigation. The university states none of these individuals have consented to the disclosure of their identifying information. *See id.* § 51.971(d). Upon review, we agree release of this information would directly or indirectly identify individuals as participants in the compliance program investigation. *See id.* § 51.971(c). Accordingly, the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 161.032 of the Health and Safety Code. Section 161.032 addresses a broad category of medical committees and provides, in relevant part, the following:

(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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). 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) (emphasis added).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See, e.g., Mem’l 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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Mem’l Hosp.*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor’s Hosp. v. West*, 765 S.W.2d 812, 814 (Tex. App.—Houston [1st Dist.] 1988, no writ). 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.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). Additionally, we note section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” Health & Safety Code § 161.032(f); *see also Mem’l Hosp.*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 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 Mem’l Hosp.*, 927 S.W.2d at 10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

You state the information you marked under section 161.032 of the Health and Safety Code consists of records created by, reviewed by, or prepared at the direction of the following university medical committees: the Institutional Conflict of Interest Committee, a peer review committee, the Promotion and Tenure Committee, and the Credentialing and Privileges Committee. You state the records at issue were used as part of an open and thorough review of professional performance, medical care, and health care operations. You further state the core function of these committees is to provide guidance that impacts staffing and medical care. Thus, based on these representations and our review, we find the information at issue consists of records of medical committees. Accordingly, 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 medical committees. 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 marked, 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 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 excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not

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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.

related to financial transaction between individual and governmental body protected under common-law privacy). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to public). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy).

Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining responsive information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the university may not withhold any portion of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.<sup>4</sup> *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose cellular telephone number we have marked

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the university must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, or the marked cellular telephone number is paid for by a governmental body, the university may not withhold the marked information under section 552.117(a)(1).

In summary, the university must continue to rely on Open Records Letter No. 2016-24873 as a previous determination and withhold the information at issue, which we have indicated, in accordance with that ruling. The university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university must withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose cellular telephone number we have marked timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the university must withhold the information we marked under section 552.117(a)(1) of the Government Code. 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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 633660

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)