



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2016

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

OR2016-25041

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# 633664 (OGC# 171467).

The University of Texas Southwestern Medical Center (the "university") received a request for records related to a specified member of the university's faculty. You state the university will release some information to the requestor. 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.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-24873 (2016). In that ruling, we determined (1) with the exception of the information subject to section 552.022 and the information the opposing party has seen or had access to, both of

¹We 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.

which we marked, the university may withhold the information it marked under section 552.103; (2) the university 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; (3) the university must withhold the information it marked and Parkland's information we marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code; (4) the university must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code; (5) the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we marked under section 552.117(a)(1) of the Government Code; (7) the university must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code; (8) the university 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 (9) the university must release the remaining responsive information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the university must rely on Open Records Letter No. 2016-24873 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts 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 made confidential by other statutes, such as 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 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., 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 the documents you have marked were created by or for medical committees of the university. You explain the Institutional Conflict of Interest Committee is responsible for identifying, managing, and monitoring issues concerning conflicts of interest. You inform us 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 state the Promotion and Tenure Committee considers recommendations regarding faculty promotions and awards tenure to university faculty. Finally, you state the Peer Review Committee conducts peer reviews for quality assurance purposes, ensures standards of care are met, assesses the qualifications of faculty, and tracks faculty performance. We agree each of these committees is a "medical committee" for purposes of section 161.031. Upon review, we find the information at issue was prepared at the direction of the named university committees and for committee purposes. Accordingly, 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.

Section 552.101 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 have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must rely on Open Records Letter No. 2016-24873 as a previous determination and withhold or release the identical information in accordance with that ruling. The university must withhold 1) the information you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and 2) the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in black ink, appearing to read 'Ian Lancaster', written in a cursive style.

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 633664

Enc. Submitted documents

c: Requestor
(w/o enclosures)