



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2017

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2017-04496

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# 647501 (OGC# 173054).

The University of Texas Medical Branch at Galveston (the "university") received a request for all communications between the university and a named entity during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Additionally, you state, and provide documentation showing, you have notified the National Institutes of Health Office of Laboratory Animal Welfare (the "NIH") and the United States Department of Agriculture (the "USDA") of their rights to submit comments to this office explaining why the submitted information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the NIH. We have considered the submitted arguments and reviewed the submitted 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 office has repeatedly held that the transfer of confidential information

¹As of the date of this letter, this office has not received comments from the USDA explaining why any of the submitted information should not be released.

between governmental agencies does not destroy the confidentiality of that information. *See* Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act (“FOIA”), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded, “when information in the possession of a federal agency is ‘deemed confidential’ by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” *Id.* at 7.

The NIH informs this office a portion of the submitted information was provided to the university by the NIH. The NIH informs this office that it considers the information at issue confidential under the provisions found in section 552(b)(7)(A) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(7)(A) (agency may withhold information compiled for law enforcement purposes, but only to extent production of such law enforcement information could reasonably be expected to interfere with enforcement proceedings). Therefore, we conclude the university must withhold the information at issue, which we have marked, under section 552.101 of the Government Code in conjunction with federal law.²

Section 552.101 of the Government Code also encompasses section 161.032 of the Health and Safety Code. which 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].

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

...

(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 university medical school or health science center[.]” *Id.* § 161.031(a). Section 161.0315(a) provides the governing body of a university medical school or health science center may form a medical committee, as defined by section 161.031 of the Health and Safety Code, 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 the information it has marked under section 161.032 consists of records of its Institutional Animal Care Use Committee (the “IACUC”). The university informs us the IACUC is a medical committee that is charged with overseeing the welfare and humane treatment of animal research subjects; responsible for evaluating the care, treatment, housing, and use of animals; and responsible for certifying compliance with the Animal Welfare Act and the Public Health Safety Policy. Based on these representations, we agree the IACUC is a “medical committee” for purposes of section 161.031. Thus, the university must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 51.971 of the Education Code, which provides, in relevant part, the following:

(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.

...

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

- (1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (e)(1). Section 51.971 defines a compliance program as "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[.]" *Id.* § 51.971(a)(1). You state the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You also state remaining the information you marked pertains to an ongoing compliance investigation conducted by the NIH relating to the care and use of animals during research. However, upon review, we find you have failed to demonstrate the information at issue pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). Accordingly, the university may not withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the remaining information you have marked will interfere with a pending investigation by the NIH. We note section 552.108 applies only to a law enforcement agency or prosecutor. Upon review, we find you have failed to demonstrate the NIH is a law enforcement agency for purposes of section 552.108. Accordingly, the university may not withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law. The university must withhold 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. The university must release the remaining 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, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 647501

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)