



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Ms. Ana Vieira Ayala  
Assistant General Counsel  
The University of Texas System  
210 West 7<sup>th</sup> Street  
Austin, Texas 78701

OR2019-19284

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# 775525.

The University of Texas Southwestern Medical Center (the "university") received a request for certain communications related to changes in its security policy during a specified period of time. You state that you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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. This section 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.

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<sup>1</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.

...

(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].

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

The university asserts the submitted information consists of records of its Hospital Policy Committee and Medical Executive Committee and is thus confidential under section 161.032 as records of a medical committee. The university asserts the purpose of the Hospital Policy Committee is to “ensure [the university] has accurate guiding principles to communicate the direction and desired outcomes of [the university] . . . in order to provide the best outcomes for patients.” The university also states the Medical Executive Committee “makes recommendations to the University Hospital Board on matters of peer review, credentialing and privileging physicians, approval of hospital rules and regulations.” Finally, the university states that “the information at issue was reviewed or prepared by the above-

described committees in conjunction with each committee's respective charge." Upon review, we agree the committees are "medical committees" as defined by section 161.031 and conclude the submitted information consists of records of medical committees. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup> See Health & Safety Code § 161.031(a); see also *Jordan*, 701 S.W.2d at 648 (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product).

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,



Sean McCormick  
Attorney  
Open Records Division

SMC/eb

Ref: ID# 775525

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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