



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-27440

Dear Ms. Tynan:

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# 788745 (OGC# 191916)

The University of Texas Southwestern Medical Center (the "university") received a request for communications related to changes in and a previous version of a specified standard operating procedure during a specified period of time. You state the university has 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.¹

Initially, you state, and we agree, some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-19284 (2019). In that ruling, we concluded the university must withhold the information at issue under section 552.101 of the Government Code in conjunction with

¹ 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.

section 161.032 of the Health and Safety Code. You inform us the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, the university must continue to rely on Open Records Letter No. 2019-19284 as a previous determination and withhold the information at issue 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. 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.

...

(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 explains 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 these 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.² *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).

In summary, the university must continue to rely on Open Records Letter No. 2019-19284 as a previous determination and withhold information at issue in accordance with that ruling. 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.

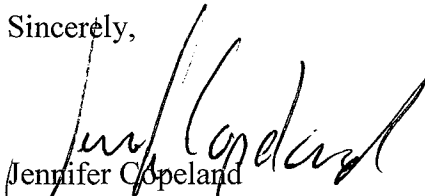
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 788745

Enc. Submitted documents

c: Requestor
(w/o enclosures)