



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 26, 2020

Ms. Jennifer Burnett
Senior Attorney & Public Information Officer
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-16605

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# 833461 (OGC# 196487).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for all documents pertaining to a specified topic during a defined time period. 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

Initially, you note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which you marked, and the university need not release it in response to this request.

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 protected by other statutes, such as section 161.032 of the Health and Safety Code, which provides, in relevant part:

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 that those records contain substantially different types of information than that submitted to this office.

(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 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 [s]ection 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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Memorial 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). 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 inform us the information you marked consists of records of the university’s Institutional Animal Care and Use Committee (the “IACUC”). You assert the IACUC is a medical committee and the submitted information is confidential under section 161.032 as records of a medical committee. You state the IACUC is charged with “certifying that all research utilizing animal subjects, or using animal derived materials, conforms to principles

and/or regulations enunciated by the [u]niversity, the Department of Health and Human Services, and the U.S. Department of Agriculture.” Based upon your representations and our review, we agree the IACUC constitutes a medical committee as defined by section 161.032. Further, you state the information was created by or at the direction of the IACUC for committee purposes. Based upon your representations and our review, we find the information you marked consists of records of a medical committee. Thus, the information you marked must be withheld 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 information protected by other statutes. The laboratory claims the submitted information is confidential under section 801.353 of the Occupations Code. This section provides, in part, the following:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian’s client.

(b) A veterinarian may not be required to release information concerning the veterinarian’s care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate court order or subpoena.

Occ. Code § 801.353(a), (b). Section 801.353 limits a veterinarian’s release of information concerning the veterinarian’s care of an animal to certain circumstances. *See id.* You state the information you marked concerns the university veterinarians’ provision of vet services. You state the university has not received consent from the owner or an appropriate court order or subpoena to release the information at issue. *See id.* § 801.351(a)(1) (defining “client” as “owner or other caretaker of the animal”). Based on your arguments and our review, we conclude the information at issue consists of veterinary records that are subject to chapter 801 of the Occupations Code. Accordingly, the university must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code.

In summary, 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. The university must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations 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 <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 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 833641

Enc. Submitted documents

c: Requestor
(w/o enclosures)