



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2020

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

OR2020-31280

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# 858195 (OGC# 198893).

The University of Texas Southwestern Medical Center (the "university") received a request for four categories of information pertaining to a specified document. You state the university does not maintain information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</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. 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:

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</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.

(a) The records and proceedings of a medical committee are confidential and not subject to court subpoena.

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(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 664 (Tex. 1986). These cases establish “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.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to section 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 McCown*, 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 McCown*, 927 S.W.2d at 9-10.

You inform us the information you have 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 information at issue is confidential under section 161.032 as records of a medical committee. You state the IACUC’s purpose is “oversee[ing] the welfare and humane treatment of animal research subjects in accordance with Public Health Service policy and the Animal Welfare Act[.]” 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 at issue was created by or at the direction of the IACUC for committee purposes. Based upon your representations and our

review, we find the information at issue consists of records of a medical committee. Thus, 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.

Section 552.101 of the Government Code also encompasses information protected by section 801.353 of the Occupations Code, which provides, in relevant 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 have marked consists of veterinary records of veterinarians employed by the university. You inform us the university is the owner of the animals at issue and does not consent to the disclosure of the animals' records. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). Further, you state the requestor has not produced an appropriate court order or subpoena to release the information at issue. Based on these representations and our review, we conclude the information at issue consists of veterinary record information that is subject to chapter 801 of the Occupations Code. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code.<sup>3</sup>

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You explain the information at issue pertains to an application for grant funding of a certain university research project. You assert the university has specific marketplace interests in the information at issue because the university competes for, among other things, research grant funding. You explain, "[t]he [u]niversity competes with other public and private entities for research grant funding from

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

a variety of sources in order to conduct innovative new research and continue ongoing research efforts.” You argue release of the information at issue would provide a competitive advantage to the university’s competitors because “it would hinder the [u]niversity’s ability to successfully seek grant funding on the project at issue.” Based upon your representations and our review, we find you have demonstrated the university has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of the information at issue would give advantage to a competitor or bidder. Accordingly, the university may withhold the remaining information under section 552.104(a) of the Government Code.<sup>4</sup>

In summary, 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 withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code. The university may withhold the remaining information under section 552.104(a) of the Government 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 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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/rm

Ref: ID# 858195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.