



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2022

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2903

OR2022-31508

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# 978256 (UT OGC# 206750).

The University of Texas M.D. Anderson Cancer Center (the “university”) received a request for several categories of information pertaining to the care, handling, and research of certain animals by the university.¹ The university states it will release some information to the requestor. The university informs us it does not have information responsive to portions of the request.² The university claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the university claims and reviewed the submitted information, some of which consists of a representative sample.³

¹ The university states, and provides documentation showing, it sought and received clarification of the information requested. *See* Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

³ We assume that 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

Section 552.101 of the Government Code exempts 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:

(a) The records and proceedings of a medical committee are confidential and 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 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.

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.

The university inform us some of the submitted information consists of records of the university's Institutional Animal Care and Use Committee (the "IACUC"). The university asserts the IACUC is a medical committee and the submitted information is confidential under section 161.032 as records of a medical committee. The university states the IACUC's purpose is overseeing the welfare and humane treatment of animal research subjects in accordance with the Animal Welfare Act and the Public Health Service Policy. Based upon these representations and our review, we agree the IACUC constitutes a medical committee as defined by section 161.032. Further, the university states the information at issue was created by or at the direction of the IACUC for committee purposes. Based upon this representation and our review, we find the information at issue consists of records of a medical committee. Thus, the university must withhold the information it indicated under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.⁴

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.* The university states the remaining information consists of veterinary records of veterinarians employed by the university. The university informs us it 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, the university states 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 remaining information 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 it indicated under section 552.101 of the Government Code in conjunction with section 161.032 of the Health

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

and Safety Code. The university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/pt

Ref: ID# 978256

Enc. Submitted documents

c: Requestor
(w/o enclosures)