



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2022

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

OR2022-32355

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# 979200 (OGC #206723).

The University of Texas Medical Branch at Galveston (the "university") received a request for request for five categories of information pertaining to university programs during a defined period of time.¹ You state you do not have information responsive to portions of the request.² 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.³

¹ You state the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date 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, create responsive information, or obtain information that is not held by or on behalf of the university. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 452 at 3 (1986).

³ 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.

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, as follows:

(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] 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 with committee impetus and purposes.” *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 the 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 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's purpose is "overseeing the welfare and humane treatment of animal research subjects." 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 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 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 upon 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 marked 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 you marked 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 979200

Enc. Submitted documents

c: Requestor
(w/o enclosures)