



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2022

Ms. Ruth E. Shapiro
Senior Assistant General Counsel
University of Houston System
4302 University Drive, Room 311
Houston, Texas 77204-2028

OR2022-39452

Dear Ms. Shapiro:

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# 991302 (Ref. No. IR07840).

The University of Houston (the "university") received a request for multiple points of information regarding a specified committee during a defined period of time.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 made confidential by other statutes, such as section 161.032 of the Health and Safety Code. Section 161.032 addresses a broad category of medical committees and provides, in relevant part, the following:

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

¹ You state the university sought and received clarifications 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 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.

...

(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].

...

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). A “medical committee” is any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See id.* § 161.031(a). The term also encompasses “a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031 (b) (emphasis added).

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.

You assert the submitted information is made confidential by section 161.032 of the Health and Safety Code as records of a medical committee. You state the information at issue

consists of records of the university's Institutional Animal Care and Use Committee (the "IACUC"). You inform us the IACUC's purpose is to oversee and evaluate the university's animal care and use program and is charged with certifying that all care and use of animals at the university conforms to principles and regulations enunciated by the university, the US Department of Agriculture, the NIH Office of Laboratory Animal Welfare, and the Association for Assessment and Accreditation of Laboratory Animal Care. Further, you state the IACUC must "review and approve or deny every protocol and project that involves animals" and the IACUC "also addresses areas of concern regarding violations of any law or policy." We agree the IACUC is a "medical committee" for purposes of section 161.031. You inform us the submitted information was specifically prepared by the IACUC or prepared at the direction of the IACUC, was not prepared in the ordinary course of business, and was developed or created for compliance and reporting purposes. Based on these representations and our review, we agree the submitted information consists of records of a medical committee. *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). 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.³

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/pt

Ref: ID# 991302

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure.