



October 7, 2002

Mr. J. Robert Giddings
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2002-5651

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170247.

The University of Texas M.D. Anderson Cancer Center (“M.D. Anderson”) received a request for “the complete minutes, including related records and disclosure documents, of the conflict of interest committee from January 1997 to the present.” You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and the common-law right to privacy. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered the information submitted to this office by the requestor’s representative. See Gov’t Code § 552.304 (providing for submission of public comments).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 161.032 of the Health and Safety Code provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. ... Records, information, or reports of a medical committee ... and records, information, or reports provided by a medical committee ... to the governing body of a public hospital ... are not subject to disclosure under Chapter 552, Government Code.

¹We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

....

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital . . .

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 . . .” Health & Safety Code § 161.031(a). The term “medical committee” also includes “a committee, including a joint committee, of one or more of the entities listed in Subsection (a).” *Id.* § 161.031(c). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services . . .” Health & Safety Code § 161.0315(a).

You state that M.D. Anderson’s conflict of interest policy requires faculty to make disclosure of potential conflicts of interest directly to the Conflict of Interest Committee (the “committee”). You further state that “the purpose of the disclosures by the faculty members is to identify personal financial information . . . that [is] unrelated to the institution or its activities that might nevertheless bear upon the quality of medical care or research at the institution,” and that these disclosures permit the committee “to monitor outside relationships between faculty and industry in order to maintain the integrity of research conducted at the institution as well as issues regarding medical quality assurance and ethical conduct of medical research.” Based on your arguments, we find that the committee is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(c). Therefore, the submitted information in Exhibits E and F is confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See Jordan v. Court of Appeals*, 701 S.W.2d 644, 648 (Tex. 1985) (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product). As we are able to make this determination, we need not address your remaining argument.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

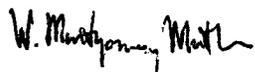
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 170247

Enc: Submitted documents

c: Mr. Todd Ackerman
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210
(w/o enclosures)

Mr. William W. Ogden
Ogden, Gibson, White & Brooks
2100 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
(w/o enclosures)