



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 14, 2003

Ms. Carol Longoria  
Public Information Coordinator  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2981

OR2003-3240

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181068.

The University of Texas Medical Branch at Galveston (the "UTMB") received a written request for the following categories of information:

- Letters received regarding the department of Hyperbarics, including all anonymous letters;
- Information, correspondence, and disciplinary action regarding [19 named UTMB employees];
- Suggestions made by Affirmative Action between June 2002 and the present; and
- Operational status and future plans of the Department of Hyperbaric Medicine.

You indicate that some of the responsive information will be released to the requestor and that other requested information does not exist.<sup>1</sup> You contend, however, that two memoranda, and attachments thereto, are made confidential under section 161.032 of the Health and Safety Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

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<sup>1</sup>The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986).

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision.” (Emphasis added.) Section 161.032 of the Health and Safety provides:

- (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.
- (b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.
- (c) This section and Section 5.06, Medical Practices Act . . . 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, or extended care facility.

Section 161.031(b) of the Health and Safety Code defines “medical committee” to include “a committee appointed ad hoc to conduct a specific investigation” of a hospital or a medical organization. You explain that the UTMB is a hospital and medical organization and that the submitted records “were clearly not created in the ordinary course of business,” but rather “they were created by an ad hoc committee appointed for the sole purpose of investigating anonymous allegations about a health care facility operated by the hospital providing health care services to patients.” After reviewing your arguments and the submitted information, we agree that the documents you submitted under Tabs 4 and 5 are made confidential under section 161.032(a) of the Health and Safety Code. Consequently, the UTMB must withhold these documents from the public in their entirety pursuant to section 552.101 of the Government Code.

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 Dep't of Pub. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CMN/RWP/seg

Ref: ID# 181068

Enc: Submitted documents

c: Ms. Rebecca Skains  
4211 Running Pine Drive  
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(w/o enclosures)