



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 19, 2003

Mr. Jeffrey S. Young  
Associate General Counsel  
Texas Tech University Health Sciences Center  
3601 4<sup>th</sup> Street, Stop 6246  
Lubbock, Texas 79430-6246

OR2003-3344

Dear Mr. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181269.

The Texas Tech University Health Sciences Center (the "center") received a request for all documentation regarding security and safety concerns at laboratories housing select agents at the center that was generated by members of the Institutional Biohazards Committee and submitted to the Director of Safety Services during a specific time period. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of comments regarding why requested information should or should not be withheld).

Initially, you claim that all of the requested information is protected from disclosure under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. Section 552.101 of the Government Code 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(a) of the Health and Safety Code makes confidential the "records and proceedings of a medical committee." Health & Safety Code § 161.032(a). A "medical committee" is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, or extended care

facility. Health & Safety Code § 161.031(a). Moreover the term includes “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.” Health & Safety Code § 161.031(b).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996)(orig. proceeding); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988)(orig. proceeding); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986)(orig. proceeding); *Hood v. Phillips*, 554 S.W.2d 160 (Tex.1977); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977)(orig. proceeding); *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195 (Tex. App.—Corpus Christi 1993, orig. proceeding), *overruled on other grounds by, Memorial Hosp.-The Woodlands v. McCown*,927 S.W.2d 1 (Tex. 1996) (orig. proceeding); *Doctor’s Hosp. v. West*, 765 S.W.2d 812 (Tex.App.—Houston [1st Dist.] 1988, orig. proceeding); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex.App.—Fort Worth 1988, orig. proceeding). 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 things, statutory predecessor to Health & Safety Code § 161.032).

You state that the requestor seeks records of the Institutional Biohazards Committee (the “IBC”) and the Radiation Safety Committee (the “RSC”). You explain that the IBC is charged with the responsibility of reviewing and approving proposals, activities, and experiments by the center’s researchers involving organisms that present a risk to humans. You further explain that the RSC is responsible for overseeing the use of radioactive materials. Finally, you state that these committees were created pursuant to regulations promulgated by several federal agencies. After reviewing your arguments, we agree that the IBC and RSC are “medical committees” as defined by section 161.031. Furthermore, we agree that many of the submitted exhibits were prepared by or at the direction of the committee for committee purposes and are, therefore, confidential under section 161.032(a). Accordingly, the center must withhold these exhibits under section 552.101 of the Government Code. On the other hand, based on our review, we find that exhibits F-7 through 12 were created without committee impetus. Thus, these exhibits may not be withheld under section 552.101.

You also claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex.

App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.) (emphasis added). However, an agency’s policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (records relating to problems with specific employee do not relate to making of new policy but merely implement existing policy); Open Records Decision No. 615 at 5-6 (1993). *But see* Open Records Decision No. 631 (1995) (finding personnel matters of broader scope were excepted from disclosure under Gov’t § 552.111). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

After reviewing the remaining exhibits, we agree that a portion of exhibit F-9 consists of a committee member’s advice, recommendation, or opinion regarding a policy matter of the committee. Thus, the center may withhold this information under section 552.111. However, the remaining information contained in these exhibits is either purely factual or does not relate to the policymaking functions of the committee.

Nevertheless, one of the remaining exhibits may contain information that is may be protected from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. We have no indication whether the employee at issue has elected to withhold her 552.117 information. Accordingly, if the employee has elected to limit public access to this information in accordance with the procedures of section 552.024 of the Government Code, the center must withhold this information from required public disclosure pursuant to section 552.117. *See* Open Records Decision Nos. 622 (1994), 455 (1987). If the proper election was not made before the center received this written request, the information must be released. *See* Open Records Decision No. 530 at 5 (1989) (whether particular piece of information is public must be determined at time request for it is made). We have marked the information that must be withheld if the employee made a proper election under section 552.024. The remaining information, however, must be released.

In summary, we have marked the submitted exhibits that must be withheld under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. We have also marked a portion of exhibit F-9 that may be withheld from disclosure under section 552.111. Finally, we have marked information that may be protected under section 552.117. The remaining information, however, must be released.

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).

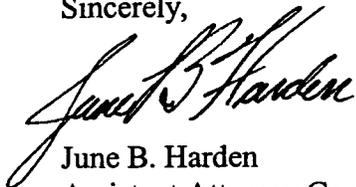
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is written in a cursive, flowing style.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 181269

Enc: Marked documents

c: Ms. Kay Boren  
Assistant News Director  
KJTV Fox 34  
9800 University Avenue  
Lubbock, Texas 79423  
(w/o enclosures)