



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2005

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-03108

Dear Ms. Longoria:

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# 221821.

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for information related to specified research protocols. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You argue that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.914(1) of the Education Code. Section 51.914 of the Education Code provides in pertinent part as follows:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 552, Government Code, or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee[.]

Educ. Code § 51.914(1). As noted in Open Records Decision No. 651 (1997), the legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” Furthermore, whether particular scientific information has such a potential is a question of fact that this office is unable to resolve in the opinion process. *See id.* Thus, this office has stated that in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a university’s assertion that the information has this potential. *See id.* *But see id.* at 10 (stating that university’s determination that information has potential for being sold, traded, or licensed for fee is subject to judicial review).

You represent that the requested information relates to three protocols submitted to the university’s Institutional Animal Care and Use Committee (IACUC), previously known as the Institutional Animal Care Research Advisory Committee (IACRAC). You state that “[d]isclosure of this information . . . would directly reveal the substance of the research and permit third parties to appropriate such research.” You further state “the type of information reflected in the protocols and related IACUC correspondence does have the potential for being sold, traded, or licensed for a fee.” Based on your representations and our review, we agree that the majority of the requested information reveals the substance of the research at issue and is therefore confidential under section 51.914 of the Education Code and excepted under section 552.101 of the Government Code.

However, the remaining portions of the requested information contain general personnel information and other material tangential to the substance of the proposed research. We find that this information, which we have marked, does not reveal the substance of the research at issue and is not confidential under section 51.914. Accordingly, this remaining information may not be withheld under section 552.101 on that basis. *See generally* Open Records Decision Nos. 557 (1990) (stating that working titles of experiments are not *per se* protected by Educ. Code § 51.914 because release would not permit person to appropriate research nor does information directly reveal substance of proposed research), 497 (1988) (stating that information related to research is not protected if it does not reveal details about research). We now address whether any of this remaining information may withheld under the other exceptions you raise.

You also claim that the requested information is protected from disclosure under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.

Section 161.032(a) makes confidential “records and proceedings of a medical committee.” A “medical committee” includes any committee, including joint committee, of a university medical school or health science center. Health and Safety Code § 161.032(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). You assert that the IACUC is a medical committee under section 161.032.

An interested third party argues that a “medical committee” is a committee that functions to improve human health services and does not apply to the IACUC. We disagree. In reviewing the statute, we see no evidence that the protections of section 161.032 are limited only to those committees that relate to human health services. *See Nat’l Liability & Fire Ins. Co. v. Allen*, 15 S.W.3d 525 (Tex. 2000) (stating that in construing statute, one must ascertain the legislature’s intent from language it used in statute and not look to extraneous matters for intent that statute does not state). As previously noted, the definition of “medical committee” includes *any* committee of a university medical school or health science center, as well as any committee established under state or federal law or rule or under the bylaws or rules of the organization or institution at issue. Health & Safety Code § 161.031(a),(b) (emphasis added). After reviewing the arguments and the submitted information, we conclude that the IACUC is a “medical committee” for purposes of section 161.031 of the Health & Safety Code.

We note, however, that the interested party also argues that even if the IACUC is a “medical committee” for purposes of section 161.031, the records at issue are not confidential because they fall outside the scope of the provision. 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 submitted information “consists of records and documents reviewed by the [u]niversity’s [IACUC]” and that “all responsive information is submitted and subject to review by the [u]niversity’s IACUC.” However, you have not explained, nor can we discern from the submitted materials, that the remaining information was prepared by or at the direction of the IACUC for committee purposes. Accordingly, the university may not withhold the remaining submitted information under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.

You also assert that the requested information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from public disclosure “information that, if released, would give advantage to a competitor or bidder.” Section 552.104 protects a governmental body’s interests in certain competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988). Having considered your arguments, we find that you have failed to establish the applicability of section 552.104 to the remaining information. *See generally* Open Records Decision No. 604 (1992) (concluding, among other things, that State Bar could not avail itself of this aspect of Gov’t Code § 552.104 because its “guiding principles” were incompatible with an ethic of marketplace competition). We, therefore, conclude that the university may not withhold any portion of the remaining submitted information under section 552.104 of the Government Code.

You also claim that telephone numbers in the remaining information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. We note that section 552.117 also encompasses a personal cell telephone number, provided that the cell phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov’t Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the university may only withhold information under section 552.117 on behalf of current or

former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their home telephone numbers confidential, the university must withhold the employees' home telephone or personal cell phone numbers that are included in the remaining information. The university may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

In summary, the university must withhold the majority of the requested information under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code. The remaining submitted information, which we have marked, must be released except for the phone numbers of university employees to which section 552.117 of the Government Code applies.

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).

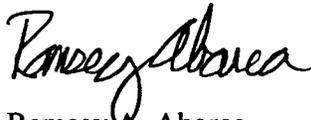
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



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Open Records Division

RAA/jev

Ref: ID# 221821

Enc. Submitted documents

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