



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2005

Mr. Scott Kelley
Deputy General Counsel
Texas A & M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2005-03217

Dear Mr. Kelley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 222086.

Texas A&M University (the "university") received a request for "[d]ocuments regarding disciplinary action taken against employees of the Division of Student Affairs, including, but not limited to, letters of reprimand and notices of termination, since January 1, 2004." You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the document submitted as Exhibit B is the confidential record of a medical peer review committee and, therefore, excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Medical peer review is defined by the Medical Practice Act (the "MPA"), found at subtitle B of title 3 of the Occupations Code, to mean "the evaluation of medical and health care services, including evaluation of the qualifications of professional health care practitioners and of patient care rendered by those practitioners." Occ. Code § 151.002(a)(7). A medical peer review committee is "a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the

health care entity and is authorized to evaluate the quality of medical and health care services[.]” *Id.* § 151.002(a)(8). Section 160.007 of the MPA states that, “[e]xcept as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.” Occ. Code § 160.007.

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.

...

(c) 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.

...

(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). Section 161.031(a) defines a “medical committee” as “any committee . . . of (3) a university medical school or health science center” Section 161.031(b) provides that 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.’” Section 161.0315 provides in relevant part that “[t]he governing body of a hospital, medical organization [or] university medical school or health science center . . . 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 the document submitted as Exhibit B “was created by or at the discretion of a medical peer review committee and was not created or maintained in the regular course of business. The information contained in the document is a direct result of a finding by a medical peer review committee regarding the review of a physician’s qualifications, competence, and ethics.”

However, we note that the document submitted as Exhibit B is a letter from the university informing a doctor of his termination of employment with the university, which was also submitted to the Vice President of Student Affairs as well as to Employee Relations, and placed in the physician's personnel file. We thus conclude that the document in Exhibit B constitutes a record made or maintained by the university in the regular course of business and, therefore, is not protected under either section 160.007 or section 162.032. See *Memorial Hospital - The Woodlands v. McCown*, 927 S.W.2d (Tex. 1996) (holding that the statutory language "records made or maintained in the regular course of business" meant "records kept in connection with the treatment of [a hospital's] individual patients as well as the business and administrative files and papers apart from committee deliberations."); *In re Methodist Hospital*, 982 S.W.2d (Tex. App.—Houston [1st Dist] 1998)(hospital's infectious disease reports were "kept in the regular course of business," as reports were made available to groups outside of committees that produced documents, and reports thus were not protected by privileges for proceedings and records of hospital medical committees and medical peer review committees); see also *Harris Hosp. v. Schattman*, 734 S.W.2d 759 (Tex.App.—Fort Worth,1987) (letters written by hospital to physician were discoverable in medical malpractice action against physician and hospital; physician was obviously aware of information contained in letters, including identities of any sources of criticism of physician contained therein, and thus, denial of discovery of correspondence would not serve intended purpose of permitting open and thorough review of physician's practice and right to continued practice on hospital's staff). Accordingly, the document in Exhibit B may not be withheld under section 552.101 in conjunction with section 160.007 of the Occupations Code.

Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, see Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, the university must withhold the information it has marked in Exhibit

C under section 552.101 in conjunction with privacy. The remaining submitted information must be released to the requestor.

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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 222086

Enc. Submitted documents

c: Mr. Mark T. McCaig
P.O. Box 15152
College Station, Texas 77841
(w/o enclosures)