



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2005

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

OR2005-04145

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# 224073.

The University of Texas M.D. Anderson Cancer Center ("M.D. Anderson") received a request for information reflecting all communications made during a specified time period between Pfizer, Inc. and M.D. Anderson "regarding study ID Numbers CD0000068139; MDA-ID-99368; NCI-P00-0135; SC-NQ4-99-02-006 (ClinicalTrials.gov Identifier NCT00006124.)." You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Additionally, pursuant to section 552.305 of the Government Code, you have notified Pfizer, Inc. ("Pfizer"), an interested third party, of this request for information, of the fact that the request for information may implicate its proprietary interests, and of its right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from Pfizer.¹ We have considered the

¹ Pfizer states that it supports M.D. Anderson's arguments under sections 552.101, 552.104 and 552.110.

submitted arguments and reviewed the submitted representative sample of the responsive information.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 161.032 of the Health and Safety Code for the submitted information, which 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 . . . do[es] not apply to records made or maintained in the regular course of business by a hospital

Health & Safety Code § 161.0315(a), (c), (f). Section 161.031(a) defines a “medical committee” as “any committee . . . of (3) a university medical school or health science center” Health & Safety Code § 161.031(a). 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.” Health & Safety Code § 161.031(b). 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 inform us that M.D. Anderson’s Institutional Review Board (the “IRB”) is a committee established for purposes of patient safety and quality improvement regarding a particular matter of pharmaceutical safety. Thus, we conclude that M.D. Anderson’s IRB is a medical

² We 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

committee that falls within the definition of “medical committee” set forth in section 161.031 of the Health and Safety Code. You further state that all of the responsive documents were directed to the university’s IRB, either directly or via M.D. Anderson’s contact for the clinical trial at issue, and that they were utilized by the IRB during the committee process.

Having concluded that the IRB constitutes a medical committee and that the responsive documents were utilized by the IRB, we agree that the submitted information 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, 647-48 (Tex. 1985) (determining that statutory predecessor extended to documents prepared by or at direction of committee in order to conduct open and thorough review, and privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product); *see also* Open Records Decision No. 591 (1991) (concluding that purpose of predecessor statute was to encourage frank discussion by medical professionals). Accordingly, M.D. Anderson must withhold the submitted documents under section 552.101 in conjunction with section 161.032. As our ruling is dispositive, we do not address your other claimed exceptions.

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).

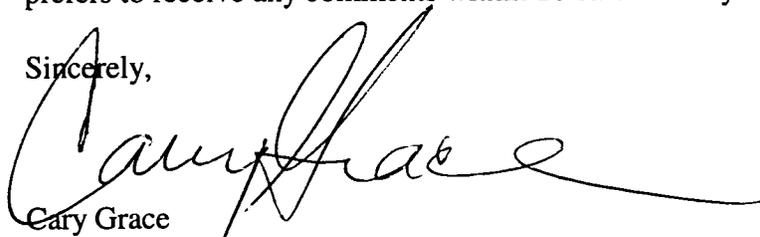
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 224073

Enc. Submitted documents

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