ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2006

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

OR2006-13120

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# 263784.

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for correspondence received by the university regarding the requestor's fellowship at another hospital. You claim that 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's claim that she has a right of access to the submitted information. Under section 552.114 of the Government Code, information in a student record at an educational institution funded wholly or partly by state revenue shall be made available on the request of the student. Gov't Code § 552.114(b)(2). This office generally applies the same analysis under section 552.114 of the Government Code as under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Open Records Decision No. 539 (1990). Section 552.026 provides as follows:

> This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Under FERPA, an adult student generally has an affirmative right of access to the student's own records, although this right does not extend to information in the student's records that identifies other students. *See* 20 U.S.C. § 1232g(a)(1)(A) (a student and the student's parents have an affirmative right of access to the student's own education records, although this right does not extend to information in the student's records that identifies other students); 34 C.F.R. § 99.3; *see also* 34 C.F.R. § 99.12(a) ("If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student").

In this instance, the submitted information consists of records pertaining to a former medical resident. The Family Policy Compliance Office (the "FPCO"), the entity charged with implementing FERPA, has determined that "[a] medical resident who works at a hospital is not a 'student' as that term is defined in FERPA [because] [t]he individual has received the Doctor of Medicine degree–the terminal degree for the profession–from a medical school and has completed his or her education as a 'student.'" *See* Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education to Judith Horowitz Richter, Office of the General Counsel, University of Maryland Medical Systems (June 22, 1995), (available at http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/richter.html). Accordingly, the director concludes that "[e]valuative records pertaining to [medical residents'] practical experience as doctors who have completed their education are not 'education records' under FERPA." Based on the interpretation and reasoning set forth in the FPCO's letter, we find that the submitted information does not constitute "education records" under FERPA, and therefore the requestor does not have a right of access to the information on that basis or under section 552.114.

We turn now to the university's argument. 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 advise that the submitted information was created by or at the direction of medical committees or medical peer review committees. Medical peer review is defined by the Medical Practices Act ("MPA"), chapter 159 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." *Id.* § 160.007.

You state that the submitted information was obtained by a university medical committee "to verify the credentials of prospective medical staff." Having reviewed the submitted information, and based on your representation that the submitted documents were created by or at the direction of medical committees or medical peer review committees, we agree that the information at issue is confidential pursuant to section 160.007 of the Occupations Code. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997); *Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1, 5 (Tex. 1996) (finding that review by medical staff committee of application for staff privileges qualifies as medical peer review because it necessarily involves review of physician's qualifications, competence, and ethics). Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations 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, 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); *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 Office of the Attorney General 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. 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,

L. Joseph James

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 263784

Enc. Submitted documents

c: Ms. Megan Rust, M.D.
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(w/o enclosures)