



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2007

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2007-00493

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# 268932.

The University of Texas M.D. Anderson Cancer Center ("M.D. Anderson") received a request for six categories ("Items") of information related to animal research at M.D. Anderson. You state that you have no responsive information for Items 4 and 5.¹ You claim that the submitted 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 state that submitted information is excepted from public disclosure under section 552.101 as it encompasses section 161.032 of the Health and Safety Code. 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. ... Records, information, or reports of a medical committee ... and records, information, or reports provided by a

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

medical committee ... to the governing body of a public hospital ... are not subject to disclosure under Chapter 552, Government Code.

....

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a hospital[or] a medical organization” *Id.* § 161.031(a). The term “medical committee” also includes “a committee, including a joint committee, of one or more of the entities listed in Subsection (a).” *Id.* § 161.031(c). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services . . .” *Id.* § 161.0315(a).

You state that the submitted information constitutes records of M.D. Anderson’s Institutional Animal Care and Use Committee (the “IACUC”). The records consist of IACUC minutes, research protocols, and grant requests. Based on your arguments and our review of the records, we find that the IACUC is a medical committee for the purposes of subchapter D of chapter 161 of the Health and Safety Code, and that the submitted information constitutes records of that committee. *See* Health & Safety Code § 161.031(a); *see also* *Jordan v. Court of Appeals*, 701 S.W.2d 644, 648 (Tex. 1985) (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product). Therefore, the submitted records are confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. Because section 161.032(a) is dispositive, we need not address your additional arguments against the disclosure of these documents.

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).

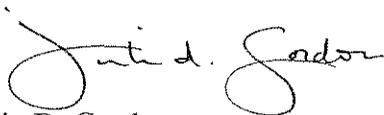
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 268932

Enc. Submitted documents

c: Ms. Robin Bernstein
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(w/o enclosures)