



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2008

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

OR2008-10757

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# 318389.

The University of Texas M.D. Anderson Cancer Center (the "center") received a request for the following information: the Michale E. Keeling Center's animal escape response plan; necropsy records for a specified chimpanzee that died of gunshot wounds in March 2008; the center's police department incident report and related investigative records for the escape of chimpanzees in March and April 2008; and all other agency records related to primate escapes from January 1, 2002 through May 20, 2008. You state that you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state that some of the documents are subject to the attorney-client privilege. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also

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<sup>1</sup>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.

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 note and you acknowledge, that a portion of the submitted information was the subject of two previous requests for information in response to which this office issued Open Records Letter No. 2008-09325 (2008). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, you may continue to rely on Open Records Letter No. 2008-09325 as a previous determination and withhold or release the requested information accordingly. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In light of this conclusion, we need not address your section 552.108 claim for the police department records. We will address your arguments against disclosure for the remaining submitted information.

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 exception encompasses information that other statutes make confidential. You contend that some of the submitted information is confidential under section 161.032 of the Health and Safety Code. Section 161.032(a) makes confidential the "records and proceedings of a medical committee." Health & Safety Code § 161.032(a). A "medical committee" is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, or extended care facility. *See id.* § 161.031(a). The term also encompasses "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." *Id.* § 161.031(b).

The precise scope of the "medical committee" provision has been the subject of a number of judicial decisions. *See id.*; *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986); *Hood v. Phillips*, 554 S.W.2d 160 (Tex. 1977); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977); *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195 (Tex. App. – Corpus Christi 1993), *disapproved by*, *Memorial Hosp. – The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Doctor's Hosp. v. West*, 765 S.W.2d 812 (Tex. App. – Houston [1st Dist.] 1988); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex. App. – Fort Worth 1988). 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 statutory predecessor to Health & Safety Code § 161.032). We note that section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” § 161.032(f); *see Memorial Hosp.–the Woodlands*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business).

You state that the submitted information contains records of the Institutional Animal Care and Use Committee (the “IACUC”). You explain that the IACUC oversees and approves certain research protocols. After reviewing your arguments, we agree that the committee is a “medical committee” as defined by section 161.031; however, we find that the submitted chronological logs, chimpanzee accession worksheet, and request for laboratory examinations were created in the regular course of the center’s business, and therefore, are not confidential under section 161.032 and may not be withheld on this basis.

You also contend that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code based on the “special circumstances” aspect of common-law privacy. Ordinarily, information is protected by common-law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). However, information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which release of the information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. “Special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* After reviewing your arguments, we find that you have only demonstrated a speculative and generalized fear of harassment. Further, you have failed to demonstrate that an imminent threat of physical danger exists. Accordingly, you have not shown special circumstances sufficient to justify withholding any of the submitted information from public disclosure. Therefore, the center may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

Finally, we address your assertion that “a number of these documents . . . are also copied to in-house counsel at M.D. Anderson and are therefore attorney-client privileged.” While section 552.107 excepts information coming within the attorney-client privilege, you did not raise or explain the applicability of this exception to any of the remaining information at issue. Accordingly, we conclude that the center has not demonstrated that any of the submitted documents fall within the purview of attorney-client privilege and may not withhold any of the submitted documents under section 552.107 of the Government Code on that basis.

In summary, the center may continue to rely on Open Records Letter No. 2008-09325 regarding information in the current request that is identical to the information previously requested and ruled upon by this office and withhold or release that information accordingly. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', with a long, sweeping horizontal line extending to the right.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 318389

Enc. Submitted documents

c: Mr. Sean R. Conner  
PETA  
501 Front Street  
Norfolk, Virginia 23510  
(w/o enclosures)