



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

Mr. Kevin L. Williams
Associate General Counsel
Texas Tech University System
3601 4th Street, STOP 6246
Lubbock, Texas 79430-6246

OR2009-02261

Dear Mr. Williams:

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# 335362.

The Texas Tech University Health Sciences Center (the "university") received a request for specified protocols, protocol modification requests, adverse event reports, animal use and acquisition records, and USDA inspection reports for a specified time period. You state you have released the animal acquisition records and the USDA inspection reports. You claim 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 other statutes make confidential, such as section 161.032 of the Health and Safety Code, 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, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). 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, extended care facility, a hospital district, or a hospital authority. *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). You contend an Institutional Animal Care and Use Committee (“IACUC”) is a “medical committee.”

The requestor argues an IACUC is not a “medical committee” for the purposes of section 161.031 because this section is limited to a committee whose purpose is the assurance of quality care for human patients. We disagree. In reviewing the statute, we see no evidence the protections of section 161.032 are limited only to those committees that relate to human patients. *See Nat’l Liability & Fire Ins. Co. v. Allen*, 15 S.W.3d 525 (Tex. 2000) (stating that in construing statute, one must ascertain the legislature’s intent from language it used in statute and not look to extraneous matters for intent that statute does not state). As noted above, the definition in section 161.031(a)(3) clearly states a “medical committee” is *any* committee of a university medical school or health sciences center. Health & Safety Code § 161.031(a)(3) (emphasis added). The university states the IACUC is a committee of the university that is responsible for the review of animal research, teaching protocols, animal research facilities as well as supporting and protecting officially sanctioned use of animals in research, teaching, and service. Accordingly, we find the IACUC is a medical committee as defined by section 161.031.

The requestor also contends that even if the IACUC is a medical committee, the requested information is not confidential because it falls outside the scope of section 161.032. The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor’s Hosp.*, 765 S.W.2d at 814. 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.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). Additionally, we note section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” Health & Safety Code § 161.032(f); *see Memorial Hosp.—the Woodlands*, 927 S.W.2d at 10 (stating reference to

statutory predecessor to section 160.007 of the Occupations Code in section 161.032 is clear signal records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business). The phrase "records made or maintained in the regular course of business" has been construed to mean records that are neither created nor obtained in connection with a medical committee's deliberative proceedings. *See Memorial Hosp.—the Woodlands*, 927 S.W.2d at 10 (discussing *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988), and *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1985)). The requestor argues the information at issue was created in the regular course of business and does not pertain to the deliberative process of the committee. The requestor also states the requested protocols were created in response to the federal Animal Welfare Act. The university rebuts the requestor's arguments and states the information at issue was not created in the regular course of business, but was created for IACUC purposes. The university also states the protocols at issue exist to inform the IACUC "in its deliberative process surrounding the animal research program." Upon review of Exhibit C, we find the research protocols were specifically created for the use of the IACUC in reviewing programs at the university and were not created in the regular course of business. Thus, Exhibit C consists of records of the IACUC and is confidential under section 552.101 in conjunction with section 161.032. However, after reviewing Exhibit D, we find the university has failed to sufficiently demonstrate that the animal use records were not created in the regular course of business. Therefore, Exhibit D is not confidential under section 552.101 in conjunction with section 161.032. As you have raised no further exceptions to the disclosure of Exhibit D, it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 335362

Enc. Submitted documents

c: Requestor
(w/o enclosures)