



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2009

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

OR2009-08196

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# 346360.

The Texas Tech University Health Sciences Center (the "university") received a request for the complete acquisition, veterinary care, and animal use records obtained from Odessa Animal Control for all dogs from 2007 until present and all cats for 2007. You state that you have released the complete acquisition and veterinary care records to the requestor. 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. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the request at issue seeks animal use records for all dogs obtained from Odessa Animal Control from 2007 until present and animal use records for all cats obtained from Odessa Animal Control for 2007. You have only submitted animal use records pertaining to one cat. Thus, to the extent any additional responsive information existed on the date the university received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 that 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 use records, 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 animal use records were created in the regular course of business and do not pertain to the deliberative process of the committee. 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 submitted affidavits from the university’s attending veterinarian and the unit manager of the university’s IACUC. Both affidavits assert that the submitted documents were not created in the ordinary course of business but were specifically created at the direction of IACUC and submitted to the IACUC, upon request, for the purpose of fulfilling its duties. Based on these representations and our review of the submitted information, we find that the submitted information is confidential and must be withheld under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/eeg

Ref: ID# 346360

Enc. Submitted documents

c: Requestor
(w/o enclosures)