



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 23, 2009

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

OR2009-08610

Dear Ms. Chatterjee:

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# 346720.

The University of Texas Medical Branch at Galveston ("UTMB") received a request for (1) all actions taken on behalf of the United States Department of Agriculture and UTMB related to Advanced Trauma Life Support ("ATLS") courses at UTMB, (2) Institutional Animal Care Use Committee (the "IACUC") protocols and other documents relating to the use of live animals in ATLS courses, (3) all syllabi for ATLS courses for which live animals are used, (4) documentation relating to the acquisition of live animals for ATLS courses, and (5) all communications between UTMB and others regarding items (1)-(4) of the request. You state that UTMB does not maintain any information responsive to item (1) of the request.¹ You further state that UTMB has released all information responsive to items (3) and (4) of the request, as well as some information responsive to item (5) of the request. You note you have redacted student-identifying information pursuant to the Family

¹The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).² You claim that portions of the submitted information are exempted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³ We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential, such as 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). We find that the IACUC is a "medical committee" for purposes of section 161.031 of the Health & Safety Code.

The requestor contends that 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

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

³We 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.

[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 that the records at issue “do not constitute confidential ‘records and proceedings of a medical committee.’” The requestor further states that the requested protocols are not subject to section 161.032(a) because they were “created by course instructors, not UTMB’s animal use committee, in accordance with the requirements of [the American College of Surgeons.]” Conversely, UTMB asserts that the information at issue “includes memoranda, minutes, research protocols, and communications of [the IACUC].” Upon review of the information at issue, we find the research protocols at issue in Tab 5A were specifically created for the use of the IACUC in reviewing programs at UTMB and were not created in the regular course of business. Thus, this information is within the scope of section 161.032. Therefore, the information at issue in Tab 5A is confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

You assert that some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). We note section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. We agree that most of the e-mail addresses you have marked are within the scope of section 552.137(a). UTMB must withhold these e-mail addresses under section 552.137 of the Government Code, unless

UTMB has received affirmative consent for their release. The remaining e-mail address, however, which we have marked for release, is a government employee's work e-mail address. Thus, this e-mail address may not be withheld under section 552.137 and must be released to the requestor.

In summary, UTMB must withhold the information designated by Tab 5A under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. Other than the e-mail address we have marked for release, UTMB must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless UTMB receives affirmative consent for their release. The remaining information 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 346720

Enc. Submitted documents

c: Requestor
(w/o enclosures)