



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 8, 2009

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

OR2009-09382

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# 348358.

The University of Texas M. D. Anderson Cancer Center (the "university") received a request for all records for a specified time period in the possession of a named university employee, including all records regarding the requestor. You state the university has provided some of the responsive information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, 552.110, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with, among other things, the attorney-client privilege and the attorney work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidentiality provisions such as section 161.032 of the Health and Safety Code, which provides in relevant part:

(c) Records, information, or reports of a . . . compliance officer and records, information, or reports provided by a . . . compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Officer of Inspector General of the United States Department of Health and Human Services.

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital, . . . university medical center or health science center, [or] hospital district[.]

Health & Safety Code § 161.032(c), (e), (f). You state the requested information is maintained by the university's Office of Institutional Compliance in connection with internal compliance investigations pertaining to multiple allegations of workplace discrimination, retaliation, and unethical or illegal behavior. You inform us these investigations were performed or are being performed in accordance with the university's compliance program, which was developed pursuant to the guidelines issued by the Office of Inspector General of the United States Department of Health and Human Services. You indicate the documents at issue are not made or maintained in the regular course of business. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on your representations and our review, we conclude the information at issue consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Accordingly, the university must withhold the remaining requested information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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](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# 348358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)