



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2009

Ms. Neera J. Chatterjee  
Public Information Coordinator  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2009-12288

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# 354275 (ORR #65 from this requestor).

The University of Texas Health Science Center at Houston (the "university") received a request for all records in any form that pertain to eighteen named university employees and relate to information cited in a specified compliance investigation report. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> 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).

Initially, you state a portion of the requested information is subject to previous determinations issued by this office: Open Records Letter Nos. 2009-06042 (2009), 2009-06143 (2009), 2009-06163 (2009), 2009-06185 (2009), 2009-06197 (2009), 2009-07360 (2009), 2009-07441 (2009), 2009-07457 (2009), 2009-07501 (2009), 2009-07525 (2009), 2009-07583 (2009), and 2009-07624 (2009). You have not indicated the facts and

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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.

circumstances have changed since the issuance of these prior rulings. Thus, with regard to the submitted information that is identical to the information previously requested and ruled on by this office, we conclude the university must continue to rely on our rulings in Open Records Letter Nos. 2009-06042, 2009-06143, 2009-06163, 2009-06185, 2009-06197, 2009-07360, 2009-07441, 2009-07457, 2009-07501, 2009-07525, 2009-07583, and 2009-07624 as previous determinations and withhold or release the information at issue in accordance with those decisions. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous rulings, we will consider the submitted arguments.

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. 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 Chapter 552, Government Code.

...

(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 Office 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 . . . [or] hospital district[.]

Health & Safety Code § 161.032(c), (e), (f). You state the information you have marked is maintained by the university's Office of Institutional Compliance in connection with an internal compliance investigation into an alleged violation of the Health Insurance Portability and Accountability Act. You inform us this investigation was performed in accordance with the university's compliance program. You indicate the compliance program was developed pursuant to the guidelines issued by the Office of Inspector General of the United States

Department of Health and Human Services. You also 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 you have marked 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 information you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

You assert that the remaining information is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim that the information at issue consists of communications in which university employees are seeking legal advice from attorneys representing the university. You state that the communications were intended to be confidential, and that the confidentiality of the

communications has been maintained. Upon review, we find that the university may generally withhold the remaining information under section 552.107 of the Government Code. We note, however, that some of the individual e-mails in the submitted e-mail string were communicated to non-privileged third parties, and, thus, are not privileged. Accordingly, to the extent these non-privileged e-mails, which we have marked, exist separate and apart from the submitted e-mail chain, they may not be withheld under section 552.107 and must be released to the requestor.

In summary, to the extent the submitted information is identical to the information previously requested and ruled on by this office in Open Records Letter Nos. 2009-06042, 2009-06143, 2009-06163, 2009-06185, 2009-06197, 2009-07360, 2009-07441, 2009-07457, 2009-07501, 2009-07525, 2009-07583, and 2009-07624, the university must continue to rely on those rulings as previous determinations and withhold or release the information at issue in accordance with those decisions. To the extent the submitted information is not encompassed by the previous rulings, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The university may also withhold the information you have marked under section 552.107 of the Government Code. However, to the extent the non-privileged e-mails we have marked exist separate and apart from the submitted e-mail chain, they may not be withheld under section 552.107 of the Government Code and must be released to the requestor.

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 354275

Enc. Submitted documents

c: Requestor  
(w/o enclosures)