



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

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

OR2009-13760

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# 356936 (University of Texas request no. 75 from this requestor).

The University of Texas Health Science Center at Houston (the "university") received a request for records of statistics or statistical reports pertaining to complaints and investigations by a named individual during a specified period. The request specifically excludes two records pertaining to the requestor from the scope of the request. You claim the responsive reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 section encompasses information other statutes make confidential. Section 161.032 of the Health and Safety Code provides in relevant part:

¹We 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.

(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 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 . . . university medical center or health science center[.]

Health & Safety Code § 161.032(c), (e), (f). Because the confidentiality afforded records under section 161.032(c) does not extend to records made or maintained in the regular course of business by a university health science center, *id.* § 161.032(f), we first consider whether the submitted reports were created or maintained in the regular course of business by the university. In considering whether medical committee records were made or maintained in the regular course of business, the Supreme Court of Texas considered: (1) whether the information is sought out or brought to the attention of the committee for purposes of an investigation, review, or other deliberative proceeding, *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988); (2) whether the information is prepared by or at the direction of the committee for committee purposes, *Jordan v. Court of Appeals for Fourth Supreme Judicial District*, 701 S.W.2d 644, 648 (Tex. 1985); and (3) whether the records are kept separate from those related to the treatment of individual patients and business/administrative records such that they are unrelated to any deliberative proceeding, *Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977). See *Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1 at 9-10 (Tex. 1977) (considering the holdings in *Barnes*, *Jordan*, and *Texarkana Mem'l Hosp.* in discussing "regular course of business" provision of section 161.032). The cases cited above pertain to the records of medical committees. However, section 161.032(f) does not distinguish between records of a medical committee and those of a compliance officer. Health & Safety Code § 161.032(f). Thus, we find medical committee records analogous to records of a compliance officer for purposes of considering whether they are made or maintained in the regular course of business.

The submitted reports contain statistical data about individual investigations conducted by the university's Office of Institutional Compliance ("OIC"). You inform this office that these reports were created by the Chief Compliance Officer for the OIC who presented them

to the university's Executive Compliance Committee and Audit Committee in accordance with her duties under the university's compliance program. *Cf.* 701 S.W.2d at 648. You state these documents are maintained solely by the compliance office and cannot be found in any other university department. We understand that the university's compliance program was developed pursuant to guidelines issued by the Office of Inspector General of the United States Department of Health and Human Services. *See id.* § 161.032(e). Based on your representations and our review, we conclude that the submitted information consists of reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 356936

Enc. Submitted documents

cc: Requestor
(w/o enclosures)