



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

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

OR2009-16411

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# 361823.

The University of Texas M.D. Anderson Cancer Center ("M. D. Anderson") received a request for an internal audit and an outside audit plan relating to the Science Park Research Division in Smithville. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We also have considered the comments we received from the requestor.² We assume that M. D. Anderson has released any other types of information that are responsive to this request, to the extent that such information existed when M. D. Anderson received the request. If not, then any such information must be released immediately.³ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the center to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

³We note that the 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 that other statutes make confidential. You raise section 552.101 in conjunction with section 161.032 of the Health and Safety Code, which provides in 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 . . . university medical center or health science center, [or] hospital district[.]

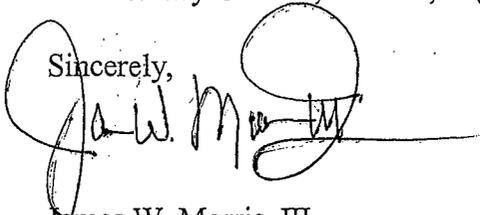
Health & Safety Code § 161.032(c), (e), (f). You state that the submitted information is maintained by M. D. Anderson's Office of Institutional Compliance in connection with an internal compliance investigation of operational issues at Science Park. You inform us that the investigation included an audit and was performed in accordance with M. D. Anderson's compliance program. You indicate that 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 of the submitted information, we find that 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. We therefore conclude that M. D. Anderson 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. As we are able to make this determination, we need not address your other arguments against disclosure.⁴

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 361823

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that the requestor's communications with M.D. Anderson raise questions as to whether M.D. Anderson complied with section 552.301 of the Government Code. *See* Gov't Code § 552.301(a)-(b). If a governmental body fails to comply with a deadline under section 552.301 in requesting a ruling, the information at issue is presumed to be public and must be released, unless there is a compelling reason for non-disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As we are able to conclude that the submitted information must be withheld from the requestor because it is confidential by law, we need not determine whether M.D. Anderson complied with section 552.301 in requesting this ruling.