



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2009

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

OR2009-16746

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# 362433.

The University of Texas Health Science Center at Houston (the "university") received a request for the meeting minutes from the University of Texas Dental Branch ("UTDB") Periodontics Department, UTDB School of Dental Hygiene, and UTDB Administrative Council during specified time periods; a specified report and complaint; copies of time sheets for named individuals during specified time periods; the UTDB Periodontics Department budgets for 2008-09 and 2009-2010; minutes from the UTDB Periodontics Department's budget meetings during a specified time period; and a list of yearly salaries from the 2009-10 fiscal year for all Houston UTDB employees. You state that the minutes for the Periodontics Department budget meetings do not exist. You further state that some of the information will be released to the requestor. You claim that the submitted information is 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.<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).

---

<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.

Initially, we address the requestor's assertion that the university failed to meet its obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(d) provides:

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

*Id.* § 552.301(d). The requestor argues the university did not comply with the requirements of section 552.301(d)(2) because the university did not provide him with the enclosures from its September 22, 2009 letter to this office. Along with its September 22 letter, the university did include certain enclosures. These enclosures, however, only consisted of the requestor's initial request for information and the university's notification to the requestor of its request for an attorney general opinion, and did not consist of any additional written communication to this office. Thus, we find the university complied with the requirements of section 552.301 in requesting this ruling. Accordingly, we will address the university's arguments against disclosure.

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 other statutes make confidential, such as section 161.032 of the Health and Safety Code, which provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

...

(c) Records, information, or reports of a medical committee . . . and records, information, or reports provided by a medical committee . . . to the governing

body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a hospital [or] a medical organization . . . .” *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). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services . . . .” *Id.* § 161.0315(a). You contend the faculty meetings of the university’s Periodontics and Dental Hygiene Departments, as well as the UTDB Administrative Council, are all “medical committees.”

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 [1st Dist.] 1988); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex. App.—Fort Worth 1988). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. 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.* at 648; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). We note that 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 that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business).

A portion of the submitted information consists of meeting minutes from the university Periodontics Department and School of Dental Hygiene Department faculty meetings and the UTDB Administrative Council. You state that the two faculty groups and the ad-hoc UTDB Administrative Council are medical committees, and the information at issue consists of records prepared by those committees for committee purposes. Based on your representations and our review, we agree the faculty meetings of the Periodontics Department, the faculty meetings of the School of Hygiene Department, and the UTDB Administrative Council constitute medical committees as defined by section 161.031. Furthermore, after review of the information at issue, we find that it consists of records of

medical committees. Accordingly, the university must withhold the portion of the submitted information consisting of minutes for the three medical committees under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

You state the remaining submitted information is maintained by the university's Office of Institutional Compliance (the "OIC") in connection with an investigation into an alleged conspiracy to misappropriate state funds and defraud the university of tuition funds, as well as an investigation into a complaint relating to the university's Dental Hygiene Clinic. You inform us these investigations were performed in accordance with the university's compliance program. You also indicate the documents at issue were created as a result of the OIC's investigations into the two aforementioned complaints and therefore 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). 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* Health and Safety Code § 161.032(e). Based on your representations and our review, we conclude the remaining submitted information 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 also withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>2</sup>

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\\_or1.php](http://www.oag.state.tx.us/open/index_or1.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 McGuire  
Assistant Attorney General  
Open Records Division

JM/eb

---

<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 362433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)