



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 3, 2011

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

OR2011-05987

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# 416239 (OGC# 135289).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for the following: (1) the names, positions, program information, and contact information for residents and fellows who have already matched and signed contracts with the university or Parkland Medical Center ("Parkland") from the National Resident Matching Program (the "NRMP") "early match" for 2011; (2) the names, positions, program information, and contact information for fellow and resident applicants whom the university and Parkland have interviewed for the NRMP expected to occur in March of 2011; (3) information pertaining to specified donations and pledges given to Parkland; and (4) information pertaining to specified donations and pledges given to the university, including the "shortfall" from a specified fund-raising goal. You state the university does not have any information responsive to categories (1) and (3).<sup>1</sup> You also state the university

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

will withhold the following: (a) certain personal information of employees subject to section 552.117 of the Government Code under section 552.024 of the Government Code; (b) social security numbers under section 552.147(b) of the Government Code; and (c) bank account and routing numbers under section 552.136 of the Government Code and personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim that information responsive to categories (2) and (4) is excepted from disclosure under sections 552.101 and 552.1235 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>3</sup>

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. Section 160.007 of the Occupations Code provides, in relevant part:

(a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

Occ. Code § 160.007(a). "Medical peer review" is defined by the Medical Practice Act, subtitle B of title 3 of the Occupations Code, to mean "the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners." *Id.* § 151.002(a)(7). A medical peer review committee is "a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services[.]" *Id.* § 151.002(a)(8). Section 161.032 of the Health and Safety Code further provides, in relevant part:

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<sup>2</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</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.

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

...

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). For purposes of this confidentiality provision, a medical committee “includes any committee, including a joint committee, of . . . a hospital [or] a medical organization [or] a university medical school or health science center [or] a hospital district [.]” *Id.* § 161.031(a). Section 161.0315 provides that “[t]he governing body of a hospital, medical organization, university medical school or health science center [or] hospital district . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” *Id.* § 161.0315(a).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See, e.g., Mem’l 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). 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, among other statutes, statutory predecessor to section 161.032).

The university asserts the marked information was created by or submitted to the residency education committees at the university for the purpose of upholding the university’s mission of providing the best healthcare possible and offering in-depth training within a specific specialty to medical school graduates. You explain the university has twenty-one residency programs, including programs for internal medicine, anesthesiology, and pediatrics. You

state each residency program has a program director and a residency education committee composed of faculty members within the relevant medical specialty. Further, you explain that, on a yearly basis, each residency education committee, with its program director, reviews the applications submitted to its residency program and decides which candidates to invite for interviews. Upon review, we agree the residency education committees are committees established by the university and constitute medical committees as defined by section 161.031. *See generally, Mem'l Hosp.—The Woodlands*, 927 S.W.2d at 8 (term “medical committee” is broadly defined). Further, we agree the marked information relates to these committees and is confidential under section 161.032 of the Health and Safety Code as records of a medical committee. Therefore, 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.

Section 552.1235 of the Government Code excepts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” *See* Educ. Code § 61.003.

You seek to withhold portions of the remaining information under section 552.1235 of the Government Code. You state the information you have marked pertains to individuals who are university donors and who have not given the university permission to release their names and other identifying information. Based upon your representations and our review, we agree the information you have marked identifies persons who are donors to the university. Accordingly, we conclude that the university must withhold the information you have marked under section 552.1235 of the Government Code.

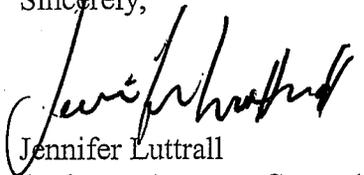
In summary, the university must withhold the information you have marked under (a) section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and (b) section 552.1235 of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 416239

Enc. Submitted documents

c: Requestor  
(w/o enclosures)