



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 4, 2013

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

OR2013-16994A

Dear Ms. Chatterjee:

This office issued Open Records Letter No. 2013-16994 (2013) on September 30, 2013, concluding that certain information must be withheld under section 552.101 of the Government Code, and that the university has the discretion to release some information to one of the requestors. We subsequently examined our ruling and determined an error was made. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Therefore, this decision serves as the correct ruling and is a substitute for the decision issued on September 30, 2013. *See generally* Gov't Code § 552.011 (providing Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"), chapter 552 of the Government Code).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 508032 (OGC#s 150598, 150754, 150597, 150614, 150977, and 150613).

The University of Texas Medical Branch at Galveston (the "university") received several requests for personnel information related to a named individual, including a request for an employment contract between that individual and the university. You state the university will release the employment contract and some of the personnel information. You state the university will redact some information subject to sections 552.117, 552.137, and 552.147

of the Government Code.<sup>1</sup> You also state the university has redacted some information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.<sup>2</sup> You claim the remaining requested 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>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. Section 552.101 encompasses section 51.971 of the Education Code, which provides in part:

(a) In this section:

(1) “Compliance program” means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

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<sup>1</sup> Section 552.024 of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code in certain situations without requesting a decision from this office. *See* Gov’t Code § 552.024(c). Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies permitting them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without seeking a ruling from this office. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without seeking a ruling from this office. *See id.* § 552.147(b).

<sup>2</sup>The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student’s consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>3</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(D) auditing.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(e) Information is excepted from disclosure under [the Act], if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (c)–(e)(1). You state the information you have marked under section 51.971 concerns various complaints made to the university concerning personnel matters. You state one of the complaints relates to an ongoing investigation into ethical questions and standards of conduct involving a university employee. You state the purpose of this ongoing investigation is to assess and ensure compliance with all applicable laws, rules, regulations, and policies. You state the release of this information during the pendency of the investigation would interfere with, and potentially compromise, that investigation. Based on these representations and our review, we agree the information pertaining to the ongoing compliance investigation is confidential under section 51.971(e) of the Education Code, and the university generally must withhold it under section 552.101 of the Government Code.

The remaining information you have marked under section 51.971 pertains to closed compliance investigations. You seek to withhold the entirety of this information and argue

that “merely withholding the names of the individuals involved is not sufficient to ensure the protections afforded” by section 51.971(c). In support of this argument, you have provided a statement from an associate vice president of Human Resources and Employee Relations who supervised the investigations, which explains the investigations involved a small number of individuals who could identify each other if only the names of the individuals are withheld. Therefore, you argue “releasing any of the information would identify, directly or indirectly, the individuals making a report to or seeking guidance from the compliance program office.” Based on these representations and our review, we agree that release of the information concerning the closed investigations would directly or indirectly reveal the identities of the individuals who participated in the investigation. Accordingly, this information is confidential under section 51.971(c) of the Education Code in its entirety, and the university generally must withhold it under section 552.101 of the Government Code.

However, one of the requestors is an assistant district attorney for the Brazoria County District Attorney’s Office (the “district attorney’s office”). Section 51.971 provides that information made confidential under that section “may be made available to . . . a law enforcement agency or prosecutor” upon compliance with applicable law and procedure, and such a disclosure is not a voluntary disclosure for purposes of section 552.007 of the Government Code. *Id.* § 51.971(f)(1), (g). Therefore, to the extent the requestor for the district attorney’s office has complied with applicable law and procedure, the university may choose to disclose the information made confidential by section 51.971 to the district attorney’s office, and the university will not waive its own interests in withholding this information from a different requestor.

The university seeks to withhold the remaining information, including the ongoing compliance investigation subject to section 51.971 of the Education Code, under section 161.032 of the Health and Safety Code, which is also encompassed by section 552.101 of the Government Code. Section 161.032 of the Health and Safety Code 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, 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].

...

(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(a), (c), (e)–(f). In addition, section 161.032(g) provides, “[n]otwithstanding any other provision of this section, the records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition on the receipt of federal money.” Act of May 27, 2013, 83rd Leg., R.S., S.B. 59, § 66 (to be codified at Health & Safety Code § 161.032(g)). In this instance, any release of information by the university in response to these requests would not be as a requirement under federal law as a condition for receiving federal money.

You inform us some of the information at issue relates to a complaint directed to the Office of Institutional Compliance (the “OIC”). You state the OIC initiated an investigation of the complaint pursuant to the university’s compliance program. You explain the information at issue was created for and is part of the compliance file for the complaint at issue and is not 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 find 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. Accordingly, we conclude this information is subject to section 161.032 of the Health and Safety Code.

You further explain some of the information consists of records of two separate medical committees. For purposes of section 161.032, a medical committee “includes any committee, including a joint committee, of . . . a university medical school or health science center [or] . . . a hospital district[.]” Health & Safety Code § 161.031(a)(3),(6). Section 161.0315 provides “[t]he governing body of a hospital, medical organization, university medical school or health science center [or] hospital district . . . may form a medical peer review committee . . . or a medical committee . . . to evaluate medical and health care service[.]” *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 “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.*; see also Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). We note the phrase “records made or maintained in the regular course of business” has been construed to mean records that are neither created nor obtained in connection with a medical committee’s deliberative proceedings. See Health & Safety Code § 161.032(f); see also *McCown*, 927 S.W.2d at 10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644). You state some of the information at issue was used by the university’s hiring committee to assess the skills and qualifications of applicants for the position of medical examiner. You also state some of the information at issue was used by an ad hoc committee formed by the university to assess the professional skill and care of the medical examiner. Based on these representations and our review of the information at issue, we agree these committees constitute medical committees for purposes of section 161.032 of the Health and Safety Code. Accordingly, we conclude 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.<sup>4</sup>

We note the university is permitted to release the information related to the ongoing compliance investigation to the district attorney’s office under section 51.971(f) of the Education Code, and section 161.032 of the Health and Safety Code makes this same information confidential. See Educ. Code § 51.971(f) (information made confidential by section 51.971 “may be made available to . . . a law enforcement agency or prosecutor”); Health & Safety Code § 161.032. Pursuant to the Code Construction Act, the term “may” signifies the creation of discretionary authority or the granting of permission or power; thus, the university’s authority to release the submitted information pursuant to section 51.971 in this instance is discretionary. See Gov’t Code § 311.016(1) (construing “may” under the Code Construction Act). Therefore, we must harmonize the university’s authority to release information to the district attorney’s office as provided under section 51.971(f) of the Education Code with the confidentiality provision of section 161.032 of the Health and Safety Code. We are guided by the principle of statutory construction that, where possible, we are to construe statutes so as to harmonize them with other relevant laws, not to find conflict. *In re United Servs. Auto. Ass’n*, 307 S.W.3d 299, 311 (Tex. 2010); see also Attorney General Opinion JM-290 at 2 (1984) (rules of statutory construction followed in Texas eliminate any “conflict” with a mandatory provision, for where a permissive provision of a statute is confronted by a mandatory provision, the permissive provision yields, avoiding conflict). Accordingly, notwithstanding the permissive release permitted by section 51.971(f) of the Education Code, we conclude section 161.032 makes the information

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<sup>4</sup>As our ruling is dispositive as to the remaining information, we do not address your argument under section 160.007 of the Occupations Code.

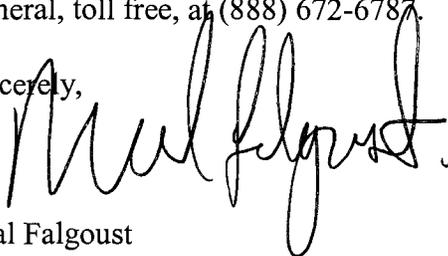
concerning the ongoing compliance investigation confidential, and the university must withhold it under section 552.101 of the Government Code.

In summary, the university generally must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code, but it may choose to release information concerning the closed investigations to the district attorney's office, to the extent the district attorney's office has complied with applicable law and procedure. The university must withhold the remaining information, including the ongoing compliance investigation, 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 508032

Enc. Submitted documents

c: 5 Requestors  
(w/o enclosures)