



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2014

Ms. Audra Gonzalez Welter
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-06908

Dear Ms. Welter:

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# 520783 (OGC No. 154427).

The University of Texas Health Science Center at Houston (the "university") received a request for 1) the current contracts and annual operating agreements between the Memorial Hermann Health System ("Memorial Hermann") and the university; 2) the curricula vitae of named university faculty members; 3) the university's requests for the University of Texas System Board of Regents (the "board") approval and the board's responses for named university faculty members; 4) the Executive Vice Chancellor approvals for named university faculty members; 5) information pertaining to the named faculty members earning above a specified salary; 6) information pertaining to financial arrangements, purchases, acquisitions, and operations related to EPHeart, LLC; Bayshore Family Practice, PA; Memorial Bone and Joint Clinic; and Memorial Bone and Joint Research Foundation; 7) information pertaining to the search for the chair of the university's department of medicine during a specified time period; 8) annual effort certification reports for a named faculty member during a specified period of time; and 9) financial information pertaining to named faculty members and faculty in specified departments earning above a specified salary. You state the university will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. You state release of the submitted information may implicate the interests of Memorial Hermann. Accordingly, you notified Memorial Hermann of the

request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from counsel for Memorial Hermann. We have also received comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information, a portion of which is a representative sample of information.¹

Initially, we note Memorial Hermann argues a portion of its information is not responsive to the instant request for information because it does consist of current contracts and annual operating agreements. This ruling does not address the public availability of non-responsive information. To the extent any of the submitted information consists of expired contracts or annual operating agreements, the university is not required to release such non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code, which provides, in relevant 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].

Health & Safety Code § 161.032(a), (c). A "medical committee" is any committee of a university medical school or health science center. *See id.* § 161.031(a)(3). Section 161.0315 provides in relevant part that "[the] governing body of a . . . university

¹We 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.

medical school or health science center . . . 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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Mem’l Hosp.*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor’s Hosp. v. West*, 765 S.W.2d 812, 814 (Tex. App.—Houston [1st Dist.] 1988, no writ). 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).

The university asserts the information it has marked is made confidential by section 161.032 of the Health and Safety Code as records of a medical committee. The university states the information at issue was submitted to and considered by the search committee (the “committee”) for the chair of the university’s Internal Medicine Division. The university states the committee includes, but is not limited to, physicians, and is charged with conducting a national search to select a candidate by, in part, reviewing and analyzing curriculum vitae of qualified applicants. The university further states the committee is “tasked with filling a position that would correlate with the quality of medical and health care services offered by the [u]niversity.” Based on these representations, we find the committee is a “medical committee” for purposes of section 161.032 of the Health and Safety Code. Accordingly, we determine the information you have marked constitutes confidential records of a medical committee under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find none of the remaining information to be highly intimate or embarrassing and not of legitimate public concern. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the university must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

You inform us you will redact information subject to section 552.117 of the Government Code. We note there is additional information which may be subject to section 552.117. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The university may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals made timely elections under section 552.024, the university must withhold the information you have marked, along with the information we have marked, under section 552.117(a)(1) of the Government Code. If the individuals at issue did not make timely elections under section 552.024, the marked information may not be withheld under section 552.117(a)(1) of the Government Code.

Memorial Hermann argues portions of its information are confidential under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Upon review, we find Memorial Hermann has failed to demonstrate the release of any of its information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future

contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (résumés cannot be said to fall within any exception to the Act). Accordingly, none of Memorial Hermann's information may be withheld under section 552.110(b) of the Government Code.

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and the dates of birth you marked under section 552.102 of the Government Code. If the individuals at issue made timely elections under section 552.024, the university must withhold the information you marked, along with the information we marked, under section 552.117(a)(1) of the Government Code. The university must release the remaining responsive information.

You also ask this office to issue a previous determination that would permit the university to withhold dates of birth of university employees under section 552.102(a) of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. We decline to issue such a previous determination at this time.

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, 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 520783

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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