ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2014

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-10036

Dear Ms. Tynan:

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# 525645 (OGC# 155228).

The University of Texas Southwestern Medical Center (the "university") received a request for information pertaining to specified types of university expansion plans for a specified area.[1] You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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[1]We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

[2]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 that those records contain substantially different types of information than that submitted to this office.

> (a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:
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> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes completed reports that are subject to subsection 552.022(a)(1). The university must release the completed reports pursuant to subsection 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* § 552.022(a)(1). You seek to withhold the information subject to subsection 552.022(a)(1) under section 552.105 of the Government Code. However, section 552.105 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 564 (1990) (statutory predecessor to Gov't Code § 552.105 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the university may not withhold the information subject to section 552.022(a)(1) under section 552.105 of the Government Code. However, because information subject to section 552.022 may be withheld under section 552.104 of the Government Code, and because section 552.101 of the Government Code makes information confidential under the Act, we will address your remaining arguments under these exceptions for all of the submitted information. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required disclosure under section 552.022(a)). We will also consider your argument under section 552.105 for the information that is not subject to section 552.022(a)(1) of the Government Code.

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 information protected by other statutes, such as section 161.032 of the Health and Safety Code. Section 161.032 addresses the broad category of medical committees and provides in relevant part:

> (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.
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> . . .
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> (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].
>
> . . .
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> (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) (footnote omitted). For purposes of this confidentiality provision, a "'medical committee' includes any committee, including a joint committee, of . . . a university medical school or health science center[.]" *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 . . . university 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., 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). 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). We note section 161.032 does not make confidential "records made or maintained in the regular course of business by a . . . university medical center or health science center[.]" Health & Safety Code § 161.032(f); *see McCown*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to Occ. Code § 160.007 in Health and Safety Code § 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). 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 McCown*, 927 S.W.2d at 9-10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

You state the submitted information consists of records, information, or reports of the university's Steering Committee for the Six-Year Plan for 2012-2018 (the "steering

committee"). You state the steering committee is an *ad hoc* committee created under the authority of the president of the university to plan for future growth and change of the university. Further, you inform us the steering committee is comprised of eleven subcommittees, including the Physical Facilities Subcommittee (the "subcommittee"). You state the subcommittee makes recommendations and findings regarding issues affecting the university, including land acquisitions, new construction, and infrastructure/remodeling. Based on your representations, we find the steering committee is a medical committee for section 161.032 purposes. You state the information at issue consists of the records, reports, and findings of the subcommittee. Thus, we conclude the submitted information 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 in conjunction with section 161.032 of the Health and Safety Code.[3]

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,

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 525645

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.