



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2015

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2015-10284

Dear Ms. Ayala:

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# 564962 (OGC# 160664).

The University of Texas MD Anderson Cancer Center (the "center") received a request for seven categories of information related to policies and procedures regarding nonhuman primates. You claim 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 information. We have also received and considered comments from the requestor.¹ *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).

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

¹Although the requestor asserts the center did not comply with section 552.301 in requesting this decision, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this exception to the submitted information. *See* Gov't Code § 552.301 (b), (e); *see also id.* §§ 552.007, .302, .352.

(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). A “medical committee” is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See 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). You contend the center’s Institutional Animal Care and Use Committee (“IACUC”) is a “medical committee.”

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). 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 section 161.032 of the Health and Safety Code).

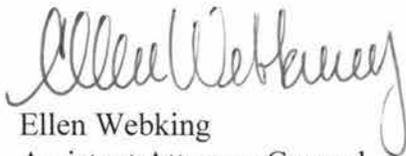
You state the IACUC is a committee of the center that is “charged with certifying that all research utilizing animal subjects, or using animal derived materials, conforms to principles and/or regulations enunciated by the [u]niversity, the Department of Health and Human Services, and the U.S. Department of Agriculture.” Accordingly, we agree the IACUC is a medical committee as defined by section 161.031. The center states the submitted information consists of research protocols created and used by the IACUC for committee purposes. Based on your representations and our review, we conclude the submitted information is confidential under section 161.032(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.²

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 564962

Enc. Submitted documents

c: Requestor
(w/o enclosures)