



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2015

Ms. Cynthia G. Tynan
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-18202

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# 577545 (OGC# 162308).

The University of Texas Health Science Center at Houston (the "university") received a request for specified survey reports sent by the Liaison Committee on Medical Education (the "LCME"). You state you will redact some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code. We also understand you notified the LCME of the request for information and that the LCME will not submit arguments objecting to release of the information at issue. *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).

¹The 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 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>.

We have received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, you state and we agree that some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-15374 (2015). In that ruling, we determined the university must withhold the 2012 LCME report under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the university must continue to rely on Open Records Letter No. 2015-15374 as a previous determination, and withhold the requested 2012 LCME report that was at issue in Open Records Letter No. 2015-15374 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Next, we address the submitted information not encompassed by the previous ruling.

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, which 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 . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital . . . are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . a medical organization[.]” *Id.* § 161.031(a)(2). Section 161.0315 provides in relevant part that “[t]he

²We 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.

governing body of a . . . medical organization . . . 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).

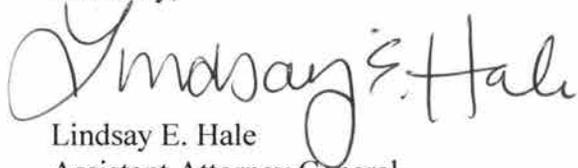
You state the remaining information was prepared by the LCME, which is an organization responsible for accrediting medical education programs. You inform us that the LCME develops and sets the standards for medical school education programs and monitors these programs for compliance. You also state the LCME makes regular evaluations of existing medical programs to determine whether the programs are in compliance with established standards. The requestor argues the LCME is not a medical committee for the purposes of section 161.032. Based on your arguments and after careful consideration of the requestor’s comments, we find the LCME is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(c); *see also Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.—San Antonio 1993, no pet.) (finding Joint Commission on Accreditation of Healthcare Organizations is medical committee under section 161.031(a)(2) and its accreditation report of hospital is confidential under section 161.032). Therefore, the remaining information is confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

In summary, the university must continue to rely on Open Records Letter No. 2015-15374 as a previous determination, and withhold the requested 2012 LCME report in accordance with that ruling. The university must withhold the remaining information 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, 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/sdk

Ref: ID# 577545

Enc. Submitted documents

c: Requestor
(w/o enclosures)