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ATTORNEY GENERAL OF TEXAS

May 2, 2016

Ms. Ana Ayala
Senior Attorney & Public Information Coordinator
Office of the General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2016-09805

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# 608229 (OGC# 167623).

The University of Texas Health Science Center at Houston (the "center") received a request for "Open Record Request ID 2015-825-2[,]" which was a previous request under the Act made to the center for information pertaining to the acquisition of fetal tissues or cadavers. The center states it will release some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. The center also states it notified Advanced Bioscience Resources, Inc. ("ABR"), of the center's receipt of the request for information and of ABR's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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.

Initially, the center informs us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-08203 (2016). In Open Records Letter No. 2016-08203, we determined the center must withhold patient identification numbers under section 552.101 of the Government Code in conjunction common-law privacy, must withhold the names and contact information of individuals involved in the transfer of fetal tissue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception, may withhold some information under section 552.111 of the Government Code, must withhold some information under section 552.136 of the Government Code, and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the center must rely on Open Records Letter No. 2016-08203 as a previous determination and withhold or release the identical information in accordance with that ruling.

The center informs us some of the submitted information was the subject of a separate previous request for information, in response to which this office issued Open Records Letter No. 2015-22484 (2015). In Open Records Letter No. 2015-22484, we determined the center must withhold patient identification numbers under section 552.101 of the Government Code in conjunction common-law privacy, but release the remaining information. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); see also Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law).* Accordingly, pursuant to section 552.007, the center may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. The center now asserts the submitted names and contact information of individuals involved in the transfer of fetal tissue are confidential under section 552.101 of the Government Code in conjunction with the common-law physical safety exception and under section 552.152 of the Government Code. Because sections 552.101 and 552.152 of the Government Code make information confidential under the Act, we will address the center's arguments under these sections for the information at issue. Nevertheless, the center states the law, facts, or circumstances on which Open Records Letter No. 2015-22484 was based have not changed regarding the remaining information at issue. Accordingly, the center must continue to rely on Open Records Letter No. 2015-22484 as a previous determination and withhold or release the remaining identical information in accordance with that ruling.² We will address the center's arguments against the release of the submitted responsive information that is not encompassed by Open Records Letter No. 2015-22484.

²See 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 section encompasses the common-law physical safety exception. The Texas Supreme Court has recognized a separate common-law physical safety exception to required disclosure. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

Upon review of the submitted arguments and information, we find the center has satisfied the requirements established by the Texas Supreme Court’s physical safety exception to required disclosure. Accordingly, the center must withhold the names and contact information of the individuals at issue in the submitted information, a representative sample of which the center has indicated, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.³

Finally, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, ABR has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the remaining information constitutes proprietary information of that third party, and the center may not withhold any portion of it on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

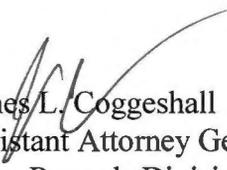
To conclude, the center must rely on Open Records Letter No. 2016-08203 as a previous determination and withhold or release the identical information in accordance with that ruling. The center must withhold the information it has indicated, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The center must rely on Open Records Letter No. 2015-22484 as a previous determination and withhold or release the remaining identical information in accordance with that ruling. The center must release the remaining information.

³As our ruling is dispositive, we do not address the other argument of the center to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 608229

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)