



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 15, 2003

Ms. Carol Longoria
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-3283

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181095.

The University of Texas Medical Branch at Galveston (the "university") received a request for 1) the roster of members of the Institutional Biosafety Committee ("IBC") mentioned in Section 6 of the university's NBL application; 2) a summary of the institutional affiliations and qualifications of IBC members; and 3) minutes of all IBC meetings from November 2002 through the date of the university's response. You advise that you have released information responsive to the first item of the request, and you state that the university has no information responsive to the second item of the request.¹ You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered written comments submitted by the requestor. See Gov't Code § 552.304 (providing that member of public may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

You argue that the submitted information is made confidential under section 161.032 of the Health and Safety Code and is therefore excepted from disclosure under section 552.101. Section 161.032 of the Health and Safety Code provides in part:

¹ The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. . . . 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.

....

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital

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 hospital [or] a medical organization” Health & Safety Code § 161.031(a). The term “medical committee” also includes “a committee, including a joint committee, of one or more of the entities listed in Subsection (a).” *Id.* § 161.031(c). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services” Health & Safety Code § 161.0315(a).

You state that the submitted information comprises records and proceedings of the university’s Biological Safety Committee (“BSC”). Based on your arguments and our review of the information, we find that the BSC is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(a). Therefore, the submitted 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. *See Jordan v. Court of Appeals*, 701 S.W.2d 644, 648 (Tex. 1985) (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product). As we are able to make this determination, we do not address your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt