



Office of the Attorney General  
State of Texas  
March 18, 1992

DAN MORALES  
ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
Institutional Division  
P. O. Box 99  
Huntsville, Texas 77342-0099

OR92-98

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13379.

Your agency has received a request for certain records concerning the medical care provided the requestor on the Jester III unit. You have forwarded to us for review several documents that you consider responsive to the request. Those records consist of a copy of a letter the requestor wrote to Doctor Glenn G. Johnson, a copy of Doctor Johnson's reply to the requestor notifying the requestor that he had asked for a quality assurance review of the requestor's health record, two copies of an interagency memo, and a copy of the medical summary submitted by a quality assurance inspector in response to Doctor Johnson's request for a review of the requestor's health record. You assert that those records are excepted from disclosure under the Open Records Act by either section 3(a)(1) of the act in conjunction with section 161.032 of the Health and Safety Code or section 3(a)(11) of the act.

This office explained in Open Records Decision No. 591 (1991), that while section 161.032 of the Health and Safety Code makes confidential the "records and

proceedings of a medical committee," that confidentiality does not extend to "records made or maintained in the regular course of business" of the health care entity. That opinion also relied on the Texas Supreme Court's definition of "records and proceedings of a medical committee" in *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988), and *Jordan v. Ct. of App. for Sup. Jud. Dist.*, 701 S.W.2d 644 (Tex. 1986). As explained in those two cases, section 161.032 makes confidential only information prepared by or at the direction of a medical committee for committee purposes, and thus protects only information generated in the committee's investigative or review process. *Barnes, supra*, at 495-6; *Jordan, supra*, at 647-8.

You explain that Doctor Johnson is chairman of the Health Care Review Board, a standing committee of the Health Services Directorate, a medical organization that provides health care to persons in the custody of the Institutional Division of the Texas Department of Criminal Justice. You also explain that the interagency memo and the medical summary are communications to or from staff "specifically tasked with support functions for the operation" of the Health Care Review Board. If Doctor Johnson directed the preparation of the medical summary on behalf of the Health Care Review Board in accordance with its investigative or review powers, the summary may be withheld pursuant to section 161.032 of the Health and Safety Code. However, the copies of the interagency memo clearly do not contain any information prepared by or at the direction of the review board, and thus they may not be withheld pursuant to section 161.032. Given the absence of such information in the memo, its release will not inhibit critical discussion or review of incidents by the review board. *See Barnes, supra*, at 496.

The copies of correspondence between Doctor Johnson and the requestor were also not prepared by or at the direction of the Health Care Review Board, and thus are not protected by section 161.032. The copies of the correspondence as well as the two copies of the interagency memo are also not protected from disclosure by section 3(a)(11) of the Open Records Act since none of those documents contain any interagency advice, opinion or recommendation. *See generally* Open Records Decision No. 470 (1987) at 7. Consequently, you must release those documents to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-98.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/mc

Ref.: ID# 13379

Enclosure: Open Records Decision No. 591

cc: William E. O'Donnell  
336032 Retrieve Unit  
Rt. 5, P.O. Box 1500  
Angleton, Texas 77515