



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

October 24, 1994

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

OR94-655

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 26023.

The Texas Department of Criminal Justice (the "TDCJ") has received a request for information pertaining to, among other things, medical services at the Chase Field and McConnell Units in Bee County. We understand that requested information other than that relating to medical services at these two units either is nonexistent, *see* Open Records Decision No. 362 (1983) at 2 (stating that Open Records Act does not require governmental body to make available nonexistent information), or will be released to the requestor. The TDCJ contends that it may withhold the requested medical services information, however.

In its initial letter to this office, the TDCJ raised sections 552.101, 552.108, and 552.111 as exceptions to required public disclosure that might protect the requested information. In a subsequent letter brief, the TDCJ presented no arguments as to the applicability of sections 552.108 and 552.111. Because sections 552.108 and 552.111 are discretionary exceptions, *see* Open Records Decision Nos. 470 (1987) at 7 (stating that governmental body may in its discretion release information statutory predecessor to section 552.111 protects); 177 (1977) at 3 (indicating that statutory predecessor to section 552.108 is discretionary exception), we conclude that the TDCJ has waived these exceptions. We will consider, therefore, only whether section 552.101 of the Government Code excepts the requested medical services information from required public disclosure.

Section 552.101 requires a governmental body to withhold from required public disclosure information "that is confidential by law, either constitutional, statutory, or by judicial decision." You believe that section 5.06(g) of the Medical Practice Act, V.T.C.S. article 4495b, and section 161.032 of the Health and Safety Code, which are incorporated into section 552.101 of the Government Code, authorize the TDCJ to withhold the requested medical services information from the requestor.

Section 5.06(g) of the Medical Practice Act deems confidential "all proceedings and records of a medical peer review committee" and deems privileged "all communications made to a medical peer review committee," except as otherwise provided by the statute. Section 1.03(a)(6) defines "medical peer review committee" as

a committee of a health-care entity,¹ the governing board of a health-care entity, or the medical staff of a health-care entity, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the health-care entity and authorized to evaluate the quality of medical and health-care services or the competence of physicians [Footnote added.]

Chapter 161, subchapter D of the Health and Safety Code pertains to the records of medical committees. Section 161.031(a) defines "medical committee" for purposes of subchapter D to include

any committee . . . of:

- (1) a hospital;
- (2) a medical organization;
- (3) a university medical school or health science center;
- (4) a health maintenance organization . . . ; or
- (5) an extended care facility.

¹Section 1.03(a)(5) of the Medical Practice Act defines "health-care entity" in pertinent part as

(A) a hospital that is licensed pursuant to Chapter 241, Health and Safety Code or the Texas Mental Health Code . . . ;

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, or other health-care facility, that provides medical or health-care services and that follows a formal peer review process for the purposes of furthering quality medical or health care

Section 161.032(a) renders confidential “[t]he records and proceedings of a medical committee.” However, subsection (c) provides that section 161.032 “and Section 5.06, Medical Practice[] Act (Article 4495b, Vernon’s Texas Civil Statutes), do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, or extended care facility.”

In *McAllen Methodist Hospital v. Ramirez* the Texas Court of Appeals articulated the purpose of statutes providing confidentiality for hospital committee records and proceedings as the protection of “the important, but limited, policy of encouraging uninhibited discussion of events that are the subject of committee action or review.” *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195, 197 (Tex. App.--Corpus Christi 1993, no writ) (citing *Jordan v. Court of Appeals for the Fourth Supreme Judicial Dist.*, 701 S.W.2d 655, 648 (Tex. 1985)). The court further explained section 161.032 of the Health and Safety Code as follows:

The supreme court has defined the terms “records and proceedings” . . . to mean those documents generated by the committee in order to conduct an open and thorough review. The privilege generally extends to documents that have been prepared by or at the direction of the committee for committee purposes. Those which are gratuitously submitted to a committee or which have been created without committee impetus are not privileged. The privilege extends to minutes of the committee meetings, correspondence between committee members relating to the deliberation process, and any final committee product, such as a recommendation. [Citation omitted.]

The privilege does not extend to routine accumulative information despite the fact that these documents may eventually serve as evidence in committee deliberations. *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988).

Id. at 198.

You have submitted for our review copies of records prepared by the Quality Assurance Program, *see* Gov’t Code § 552.303 (requiring governmental body that requests attorney general decision on open records request to supply to attorney general specific information requested), which you describe as a medical committee of the Health Services Directorate. You also state that “[t]he Health Services Directorate of TDCJ and its many subcomponents are examples of medical organizations. . . . The Quality Assurance Program is a health services committee responsible for monitoring a variety of quality of care issues.” Finally, you aver that the reports requested here were “generated as part of medical committee activity for a medical organization.”

Upon reviewing the documents you have submitted for our review, we believe that the requested medical services information was not made or maintained in the regular course of business. Consequently, section 161.032 of the Health and Safety Code and section 5.06(g) of the Medical Practice Act may deem the information confidential. However, you have not informed us whether the Quality Assurance Program is a committee that operates pursuant to written bylaws the governing body of the Health Services Directorate has approved.² Consequently, we cannot evaluate whether the requested medical services records are confidential under the Medical Practice Act.

Nevertheless, we conclude that the requested medical services records are confidential pursuant to section 161.032(a) of the Health and Safety Code and that the TDCJ therefore may withhold the information from the requestor. We believe that the Quality Assurance Program is a medical committee for purposes of chapter 161, subchapter D. Additionally, we believe that the requested information constitutes the records and proceedings of such a medical committee. Finally, as we have stated above, we do not believe that the requested information was made or is maintained in the regular course of business.³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

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²We assume that the Health Services Directorate is a health-care entity for purposes of the Medical Practice Act.

³We understand that you have submitted only representative samples of material that you believe is excepted under section 552.101 of the Government Code, together with section 5.06(g) of the Medical Practice Act and section 161.032 of the Health and Safety Code. 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. As we have suggested, whether a particular record is confidential under either section 5.06(g) of the Medical Practice Act or section 161.032 of the Health and Safety Code depends upon the nature of the committee that prepared the information and the circumstances under which the information was made or is maintained, among other things.

Ref.: ID# 26023

Enclosures: Submitted documents

cc: Mr. Samuel McKinney, III
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(w/o enclosures)