



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 18, 1996

Mr. John Steiner  
Division Chief  
Opinions, Research and Contracts  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR96-1174

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40438.

The City of Austin (the "city") received a request for "all documents containing any information (including but not limited to the entire personnel file) regarding Dr. John Maxwell who is a physician with hospital privileges at Brackenridge Hospital (the "hospital"). The requestor later clarified the request, seeking thirteen categories of information pertaining to Dr. Maxwell. You claim that some of the requested information is not subject to chapter 552 of the Government Code because the city does not have the right to possess, review, or access the information. You also claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted samples of the requested information.<sup>1</sup>

Chapter 552 of the Government Code imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See Gov't Code*

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<sup>1</sup>In reaching our conclusion here, we assume that 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.

§ 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

As the exception to disclosure that you raise is compelling, we will address your arguments. *See id.* Section 5.06(g) of article 4495b, V.T.C.S., the Medical Practices Act (the "MPA"), 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 1.06(a)(6) defines "medical peer review committee" as

a committee of a health-care entity,<sup>2</sup> 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.]

There is a three-prong test for a committee to qualify as a medical peer review committee for purposes of the MPA: (1) it must operate pursuant to written bylaws that have been approved by the policy-making body or the governing board of the health-care entity; (2) it must be authorized to evaluate the quality of medical and health-care services or the competence of physicians; and (3) it must be a committee of a "health-care entity." V.T.C.S. art. 4495b § 1.03(a)(6); *see* Open Records Decision No. 595 (1991). You state that the hospital's Credentials Committee, the medical staff Quality Assurance Committee, the Medical Executive Committee, and the Department of Obstetrics and Gynecology were all created pursuant to written bylaws that were approved by both the hospital's board of directors and the city council. You further state that these committees and the Department of Obstetrics and Gynecology were authorized to evaluate the quality of medical and health care provided by physicians on the medical staff and to evaluate the competence of medical staff members. The hospital appears to be a "health-care entity" as defined in section 1.03(a)(5)(A) of the MPA. Therefore, we conclude that these committees and the Department of Obstetrics and Gynecology are medical peer review committees within the definition of the MPA.

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<sup>2</sup>Section 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 5.06(g) of the MPA makes confidential "all proceedings and records of a medical peer review committee" as well as "all communications made to a medical peer review committee." We have reviewed the documents and conclude that they are either proceedings and records of or communications to a medical peer review committee under the MPA and, therefore, must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.002 defines "public information" as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

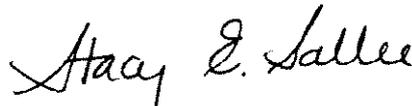
(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

You state that the city does not have the right to possess, review or access documents created by or at the hospital on or after October 1, 1995. You also state that Daughters of Charity Healthcare Services of Austin d/b/a Seton Medical Center ("Daughters of Charity") has assumed responsibility for management, control, and day-to-day decision-making for the operation of the hospital and that Daughters of Charity is not subject to the provisions of chapter 552 of the Government Code. The city has not made clear whether it owns the requested information that was created on or after October 1, 1995. If the city owns that information, it is subject to the provisions of chapter 552. As the city has represented that it does not have the right to possess, review or access the information created on or after October 1, 1995, only if the city owns the information is it subject to chapter 552 and, unless confidential by law, must release it to the requestor. Otherwise, the city need not produce that information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 40438

Enclosures: Submitted documents

cc: Ms. Rosemary L. Hollan  
Russell & Hollan, P.C.  
711 Navarro, Suite 250  
San Antonio, Texas 78205  
(w/o enclosures)