



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1997

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR97-0444

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104367.

The University of Texas Medical Branch at Galveston ("UTMBG") received a request for information about the physician "who, according to a UTMB news release of 12-10-96, has been called in 'to participate in our peer-review process[,] [t]he terms of this person's involvement in the process, i.e., salary, expense payments, contract, length of employment or association with UTMB for purposes of the peer-review process[,] [t]he city of residence of the trauma surgeon referenced here and name of his regular business/employer.'" You assert that the requested information is excepted from required public disclosure based on section 552.101 of the Government Code.

Government Code section 552.101 excepts from public disclosure information that is made confidential by law, including information made confidential by statute. You raise two confidentiality statutes: section 161.032(a) of the Health and Safety Code and section 5.06 of V.T.C.S. article 4495b, the Medical Practice Act.

As responsive to this request, you submit to this office a letter in which a UTMBG representative asks a physician to serve as an ad hoc member on a certain subcommittee. You assert that this letter is part of the "records and proceedings of a medical committee" that are made confidential by section 161.032 of the Health and Safety Code.

Health and Safety Code section 161.032 reads as follows:

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

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section and Section 5.06, Medical Practices Act (Article 4495b, Vernons 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.

Medical committee "records and proceedings" made confidential by section 161.032(a) include documents generated by the committee in order to conduct open and thorough review, as well as documents that have been prepared by or at the direction of the committee for committee purposes. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1, 10 (Tex. 1996). A "medical committee" includes, among other things, any committee, including a joint committee, of a university medical school or health science center. See Health and Safety Code § 161.031(a)(3).

As the document at issue appears to have been "generated by" and "prepared by or at the direction of" the UTMBG Professional Liability/Risk Management Committee, we conclude that the statute applies to the document. *But see Santa Rosa Med. Ctr v. Spears*, 709 S.W.2d 720, 724 (Tex. Civ. App.--San Antonio 1986, no writ) (applying predecessor provision, V.T.C.S. art. 4447d, § 3). Accordingly, we conclude that UTMBG must withhold the document from the requestor based on Government Code section 552.101 in conjunction with Health and Safety Code section 161.032(a).

We are resolving this matter with this 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 may 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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 104367

Enclosure: Submitted document

cc: Mr. Kevin Moran
Houston Chronicle
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Galveston, Texas 77551
(w/o enclosure)