



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 1, 1998

Ms. Karen W. McMurry  
Staff Attorney, Legal Services  
University Health System  
4502 Medical Drive  
San Antonio, Texas 78229-4493

OR98-2343

Dear Ms. McMurry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118396.

The Bexar County Hospital District d/b/a University Health System (Health System) received a request for "the most recent UHS accreditation report, in its entirety." We note that the request for information is from a state representative. Section 552.008 of the Government Code provides that a governmental body shall provide public information, including confidential information to a requesting member of the legislature if the requesting member states that the information is requested for legislative purposes. The requesting member in this instance does not state that the information is being requested for legislative purposes. Section 552.008, therefore, may not be applicable. Thus, we will address your arguments that the information is excepted from disclosure.

You explain that the responsive report is the result of an accreditation survey conducted by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission). You assert that pages three through nine of the report, including the Official Accreditation Decision Report recommendations, supplemental recommendations, and grid, are excepted from disclosure by sections 552.101, 552.104, and 552.110 of the Government Code. We have considered the exceptions you claimed and have reviewed the document at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that the requested records are confidential materials created by a medical committee. You claim that the report falls within the scope of section 161.032 of the Health and Safety Code, which makes the "records and proceedings

of a medical committee” confidential. Under section 161.031(a) of the Health and Safety Code, a “medical committee” includes “any committee, including a joint committee” of a hospital, medical organization, university medical school or health science center, health maintenance organization, or extended care facility. The records and proceedings of a medical committee are confidential, *id.* § 161.032(a), but the confidentiality does not extend to “records made or maintained in the regular course of business by a hospital.” *Id.* § 161.032(c); Open Records Decision No. 591 (1991).

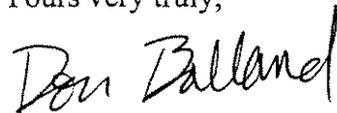
The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *Memorial -The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996)(orig. proceeding); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988)(orig. proceeding); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986)(orig. proceeding); *Hood v. Phillips*, 554 S.W.2d 160 (Tex.1977); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977)(orig. proceeding); *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195 (Tex. App.--Corpus Christi 1993, orig. proceeding), *overruled on other grounds by, Memorial Hosp.-The Woodlands v. McCown*,927 S.W.2d 1 (Tex. 1996) (orig. proceeding); *Doctor’s Hosp. v. West*, 765 S.W.2d 812 (Tex.App.--Houston [1st Dist.] 1988, orig. proceeding); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex.App.--Fort Worth 1988, orig. proceeding). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. Protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648. You advance that the Joint Commission is a medical committee as contemplated by section 161.031. We agree. *Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d 858, 862 (Tex.App.--San Antonio 1993, orig. proceeding); Health & Safety Code § 161.031(a)(2). In *Humana*, the court explicitly found that the Joint Commission fit within the statutory definition of a joint committee. *Humana*, 867 S.W.2d at 862 (“medical committee” status is determined by whether group is organized for purposes contemplated by statute and case law).

The *Humana* case additionally found that the written progress report prepared by the Joint Commission about a hospital was a protected committee record because it reflected “the deliberative process of the Joint Commission.” *Id.* As stated in *Jordon*, “any final committee product, such as recommendations,” is protected. *Jordon*, 701 S.W.2d at 648. Likewise, the Joint Commission’s accreditation report on the Health System reflects the deliberative process and recommendations of the committee. The documents were prepared by or at the direction of the Joint Commission and do not constitute routinely accumulated information. *See Jordan*, 701 S.W.2d at 647-48. Consequently, we conclude that the requested accreditation report is within the scope of the confidentiality provision. Health & Safety Code § 161.031(a)(2); *see generally* Gail N. Friend, Jennifer L. Rangel, Madison Finch, Brett A. Storm, *The New Rules of Show and Tell: Identifying and Protecting the Peer Review and Medical Committee Privileges*, 49 Baylor L. Rev. 607, 620-622 (1997). The

Health System must, therefore, withhold the Joint Commission's accreditation report.<sup>1</sup> *But see* Gov't Code § 552.008.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/nc

Ref: ID# 118396

Enclosures: Submitted documents

cc: Mr. Frank J. Corte, Jr.  
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(w/o enclosures)

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<sup>1</sup> Because we make a determination under section 161.032 of the Health and Safety Code, we do not address your arguments under article 4495b of Vernon's Texas Civil Statutes or sections 552.104 and 552.110 of the Government Code.