



September 20, 2000

Ms. Margaret A. Roll  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2000-3647

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139207.

The Texas Department of Human Services (the "department") received a request for information regarding the relationship between the requestor's home health agency, Alternate Resources, Inc., and HMO Blue, an entity that contracts with the department in the STAR+PLUS program. You state that the department intends to release some of the requested information. However, on behalf of the department, you claim that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. In addition, you claim that a portion of the requested documents may invoke the proprietary or privacy interests of HMO Blue and, pursuant to section 552.305, you have notified HMO of the request for information in order to afford it an opportunity to raise exceptions to public release of the requested information. HMO Blue has responded, claiming that a portion of the requested information is excepted under section 552.101. We have considered the exceptions you and HMO Blue have claimed and reviewed the submitted information.<sup>1</sup>

We begin with the information submitted and the claims raised by the department. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 12.003 of the Human Resources Code provides:

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<sup>1</sup>HMO Blue has submitted the information that it claims is confidential under section 552.101. This information, which was not submitted by the department, consists of the Quality Improvement Committee meeting minutes for August 30, 1999, November 30, 1999, and February 29, 2000.

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(Emphasis added).

In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012; Open Records Decision No. 166 (1977). You explain that the information at issue, which you have marked, pertains to particular clients of the STAR+PLUS program, which is a Medicaid program. Furthermore, you state that release of this information under the Public Information Act is not for the administration of the department’s assistance programs. Consequently, we find that section 552.101 in conjunction with section 12.003 of the Human Resources Code requires the department to withhold the submitted information that it has marked. *See* Open Records Decision No. 487 at 5-6 (1988).<sup>2</sup>

We turn now to the information submitted and the claims raised by HMO Blue. HMO Blue argues that the meeting minutes for three specific meetings of its Quality Improvement Committee (“QIC”) are confidential medical peer records. The three meetings that HMO Blue refers to are those that took place on August 30, 1999, November 30, 1999, and February 29, 2000. However, because the department did not submit the minutes of those meetings to this office,<sup>3</sup> we must assume that the department either does not possess the minutes to these meetings, in which case they are not responsive, or the department has already released them to the requestor, in which case these minutes are not at issue.<sup>4</sup>

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<sup>2</sup>Because section 552.101 in conjunction with section 12.003 is dispositive of this matter, we do not address the department’s other arguments.

<sup>3</sup>We note that the department did not indicate that the documents that it submitted to this office constitute a representative sample of other documents at issue. *See* Gov’t Code § 552.301(e)(1)(D).

<sup>4</sup>We note that under section 552.352, it is a criminal offense to distribute information considered confidential under the terms of chapter 552.

Therefore, this ruling does not address the minutes to the August 30, 1999, November 30, 1999, or February 29, 2000 meetings.

However, the department did submit the minutes to the QIC meeting held on November 8, 1999. Because these minutes are the same type of information that HMO Blue contends is confidential, we will consider HMO Blue's argument but only in regard to the minutes of the November 8, 1999 meeting. As explained above, section 552.101 of the Government Code exempts from required public disclosure information made confidential by statute. Accordingly, section 552.101 encompasses confidentiality provisions regarding the records of medical peer review committees such as section 160.007 of the Occupations Code.<sup>5</sup> Generally, "each proceeding or record of a medical peer review committee is confidential." Occupations Code § 160.007. A "medical peer review committee" is defined in subsection 151.002(a)(8) of the Occupations Code which provides in relevant part

'Medical peer review committee' or 'professional review body' means a committee of a health care entity . . . that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians.

Section 161.032 of the Health and Safety Code also provides for confidentiality in regard to the records of a medical committee. "The records and proceedings of a medical committee are confidential and are not subject to court subpoena." Health & Safety Code § 161.032. A "medical committee" means "any committee . . . of . . . a medical organization; . . . a health maintenance organization licensed under the Texas Health Maintenance Organization Act[;] . . . [or] an extended care facility." Health & Safety Code § 161.031(a). However, neither section 160.007 of the Occupations Code nor section 161.032 of the Health and Safety Code makes confidential "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, hospital district, hospital authority, or extended care facility." Health & Safety Code § 161.032(c); *see Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1, 11 (Tex. 1996) ("The reference to [the statutory predecessor of section 160.007 of the Occupations Code] in section 161.032 is a clear signal that records should be accorded the same treatment under both statutes in determining if they were made 'in the regular course of business.'").

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<sup>5</sup>HMO Blue bases its argument for confidentiality on section 5.06 of article 4495b of Vernon's Texas Civil Statutes. However, the Seventy-sixth Legislature repealed article 4495b of Vernon's Texas Civil Statutes. *See* Act of May 13, 1999, 76<sup>th</sup> Leg., R.S., ch. 388, § 6, 1999 Tex. Sess. Laws 1431, 2439 (Vernon) (adopting Occupations Code). The former article 4495b of Vernon's Texas Civil Statutes now is codified as the Medical Practice Act at subtitle B of title 3 of the Occupations Code, and the former section 5.06 of article 4495b is codified at chapter 160 of the Occupations Code.

“Documents made or maintained in the regular course of business” have been construed to mean routine records the creation of which did not entail a “deliberative process.” *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d at 9 (citing *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988)). In *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 648 (Tex. 1985), the court stated that records “gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected.”<sup>6</sup> *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1 at 9-10 (discussing business records and holdings in *Barnes* and *Jordan*). Therefore, even if records are submitted to or created by a medical peer review or medical committee, the records are not generally confidential if made or maintained in the regular course of business so as to be devoid of a deliberative process. *See Health & Safety Code* § 161.032(c).

HMO Blue explains that its QIC is an “internal professional review body with the overall responsibility to provide oversight of the healthplan’s quality improvement plan by reviewing and analyzing data, and making recommendations for improvement.” Moreover, HMO Blue states that QIC fulfills the quality assurance requirements listed in section 434.34 of title 42 of the Code of Federal Regulations. Based on these representations, we find that HMO Blue’s QIC qualifies as a medical peer review committee in this instance. *See Health & Safety Code* § 161.031(a); *Occupations Code* § 151.002(a)(8). Furthermore, the submitted minutes of the November 8, 1999 QIC meeting indicate a deliberative process and therefore cannot be construed as documents made in the regular course of business. *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d at 9-10. Therefore, the department must withhold the submitted QIC minutes under section 552.101 in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code.

In conclusion, the department must withhold the information regarding clients receiving assistance that it has marked under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. In addition, the department must withhold the entire minutes of the November 8, 1999 meeting of HMO Blue’s QIC under section 552.101 in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code. We have marked the document containing the minutes.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov’t Code* § 552.301(f). If the

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<sup>6</sup>*Barnes* and *Jordan* both relied upon the predecessor statute to 161.032 of the Health & Safety Code, section 3 of article 447d, Vernon’s Texas Civil Statutes, which provided, in part, that “records made or maintained in the regular course of business” were not confidential.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\er

Ref: ID# 139207

Encl: Submitted documents

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