



March 1, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-0768

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144139.

The Texas Department of Criminal Justice ("TDCJ") received requests for several categories of information, including:

- (1) All audits, surveys, correspondence and accreditation reviews issued or conducted by the National Commission on Correctional Health Care concerning Texas prisons, from January 1996 to the present.
- (2) All audits and reports produced by or for TDCJ Health Services as part of TDCJ's Operational Review Process, from January 1996 to the present.
- (3) All correctional managed health care activity reports produced periodically by Texas Tech University and University of Texas Medical Branch since January 1996.
- (4) Any and all compliance reports compiled by TDCJ, the University of Texas Medical Branch or Texas Tech University concerning medical services at Texas prison units from January 1996 to the present.
- (5) All "morbidity and mortality reports," ... that have been compiled from January 1996 to the present.
- (6) Any actuarial studies conducted on the TDCJ correctional managed health care system since January 1996

- (7) All "Death Review" reports ... that have been compiled since January 1, 1996.
- (8) All autopsy reports conducted on inmates who have died in the custody of TDCJ from January 1996 to the present.
- (9) An electronic copy of the CMC Operation Performance Evaluations Systems Database.
- (10) A copy of the records layout for the database.

You first state that you do not possess or have access to the Operations Performance Evaluation System, activity reports produced by Texas Tech University or the University of Texas Medical Branch, or any actuarial studies. Furthermore, you state that you will be providing the requested autopsy reports to the requestor. With respect to the remainder of the requested information, however, you contend that the information is excepted from public disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

Initially, we note that the records in question contain information that is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). In this instance, the submitted information contains completed reports and audits. This information may only be withheld if it is confidential under other law or if it is excepted under section 552.108 of the Government Code.

You first contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. Section 552.101 excepts from disclosure "information considered to be

¹We assume that the "representative samples" of records submitted to this office are 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.

confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 161.032(a) provides:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. ... Records, information, or reports of a medical committee ... and records, information, or reports provided by a medical committee ... to the governing body of a public hospital ... are not subject to disclosure under Chapter 552, Government Code.

....

(c) This section ... do[es] not apply to records made or maintained in the regular course of business by a hospital

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “medical committee” includes any committee, including a joint committee, of ... a hospital [or] a medical organization ...” Health & Safety Code § 161.031(a). The term “medical committee” also includes “a committee, including a joint committee, of one or more health care systems if each health care system includes one or more of the entities listed in Subsection (a).” *Id.* § 161.031(c). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization ... may form ... a medical committee, as defined by section 161.031, to evaluate medical and health care services” Health & Safety Code § 161.0315(a).

You state that TDCJ Health Services Division is a medical organization that provides medical services to TDCJ inmates. You also indicate that the Correctional Managed Health Care Committee (the “CMHCC”) is a committee created by statute that “prepares and plans for the provision of care to inmates, and then, on behalf of TDCJ, enters into contracts with providers” You do not go on to indicate, however, that the health services division created a committee that prepared or requested the preparation of any of the requested information or that the CMHCC prepared or requested the preparation of any of the requested information. You do indicate that the requested accreditation reports are prepared by the National Commission on Correctional Health Care, “an association of correction facilities and providers, among them TDCJ,” whose functions include promulgating standards for health care service and operations in correctional facilities and accrediting the health care components of correctional facilities. Based on your arguments, we find that NCCHC is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(c). Therefore, the accreditation reports produced by NCCHC are confidential under section 161.032.

You further indicate that the Mortality and Morbidity Committee is responsible for producing some of the other requested information. According to you, the Mortality and Morbidity Committee “is a classic medical committee” “composed of physicians, nurses, and other medical professionals” from TDJC, the University of Texas Medical Branch, and Texas Tech University. The Mortality and Morbidity Committee reviews the record of every inmate who died in custody to ensure that the appropriate care was provided. Based on this

information, we find that the Mortality and Morbidity Committee is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(c). You represent to this office that the Mortality and Morbidity Committee prepares the morbidity and mortality reports that are, in part, the subject of the instant request. Based on this contention and our review of the documents, we find the morbidity and mortality reports are confidential under section 161.032 of the Health and Safety Code. With respect to the requested death review reports, you state that the report consists of two stages. The first stage is the preparation of a death summary by a physician. You indicate that this summary is included in the patient's "ambulatory medical record." The second stage is the death review, which is conducted by senior staff who prepare a Mortality Committee Worksheet. Upon review of the information, we find that the worksheet is prepared at the direction of the Morbidity and Mortality Committee, and is therefore confidential under section 161.032. However, you have not indicated, nor is it apparent from the face of the information, that the death summaries are prepared by or at the direction of any medical committee. Therefore, this information is not confidential under section 161.032.

You likewise argue that the requested operational review audits, specifically quality assurance audits, are excepted as medical committee records. However, you do not specifically indicate, nor is it apparent from the face of the information, that the audits are prepared by or at the direction of a medical committee. Therefore, the requested audits are not confidential under section 161.032. Consequently, while you have adequately demonstrated that the accreditation reports produced by NCCHC and the morbidity and mortality reports and death reviews prepared by and at the direction of the Morbidity and Mortality Committee are confidential under section 161.032 of the Health and Safety Code and must therefore be withheld under section 552.101 of the Government Code, you have failed to show that the operational review audits and death summaries are confidential under section 161.032.

Nonetheless, you argue that the death summaries are protected from disclosure under section 159.002(b) of the Occupations Code, known as the Medical Practices Act ("MPA"). The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter ... may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes

both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). You indicate that the death summaries are prepared by the treating physicians and are included in the prisoner's medical records. Based on your arguments and our review of the information, we conclude that the death summaries are subject to the MPA and may be released only in accordance with that statute.

Finally, we address your section 552.131 argument with respect to the operational review audits. Section 552.131 relates to inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part that, "[n]otwithstanding . . . Section 552.131," eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [TDCJ are] subject to required disclosure[.]" Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.131 subject to section 552.029. In this instance, you assert that entries in the responsive information "that identify inmates or that say something about the specific medical care or situation of inmates is of necessity information about inmates." We agree that portions of the information relating to the operational review audits, which we have marked, are related to inmates and therefore excepted from disclosure under section 552.131. The remaining information in the operational review audits is not excepted from disclosure and must be released. *See* Gov't Code § 552.131(a), (b)(1).

In summary, you must withhold the accreditation reports, the morbidity and mortality reports, and the death reviews under section 161.032 of the Health and Safety Code in conjunction with section 552.101 of the Government Code. Furthermore, all of the death summaries are confidential under the MPA, and may be released only as provided under that act. Finally, information in the operational review audits relating to prisoners, which we have marked, must be withheld under section 552.131. Based on these findings, we need not reach your remaining arguments under sections 552.101 and 552.107.

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 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).

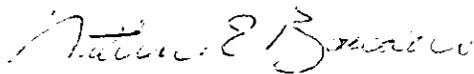
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Hadassah Schloss at 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 144139

Encl: Submitted documents

cc: Mr. Mike Ward, Staff Writer
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)