



May 4, 2001

Ms. Anne Marie Zirkelback
Garner, Roberts & Roberts, L.L.P.
2206 North Highway 35 Bypass
P.O. Box 9
Port Lavaca, Texas 77979

OR2001-1823

Dear Ms. Zirkelback:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID#146811.

Memorial Medical Center ("MMC"), which you represent, received a request for the minutes of meetings of the hospital board and the medical staff for the months of October, November, and December of last year. You have released the minutes of the hospital board meetings. You claim that the minutes of the medical staff meetings are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is made confidential by another statute. You claim that the minutes of the medical staff meetings are confidential under section 161.032 of the Health and Safety Code. Subchapter D of chapter 161 of the Health and Safety Code governs medical and medical peer review committees. Section 161.031 defines a "medical committee" as including "any committee, including a joint committee, of . . . a hospital" and further provides that "[t]he term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution." Health & Safety Code § 161.031(a)(1), (b). Section 161.032 provides in relevant part:

- (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). You represent to this office that “[t]he Medical Staff Committee operates under bylaws that were approved by the MMC Board.” You further explain that “[t]he minutes are generated and maintained by the [Medical Staff] Committee solely for their purposes and do not consist of documents submitted by any third party.” You have submitted the responsive minutes for our review. Based on your representations and our review of the submitted documents, we find that they constitute records, information, or reports of a medical committee under subchapter D of the Health and Safety Code. We thus conclude that the submitted documents are confidential under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code and must not be released. *See also Barnes v. Whittington*, 751 S.W.2d 493, 495-96 (Tex. 1988) (construing predecessor statute); *Jordan v. Court of Appeals for the Fourth Judicial Dist.*, 701 S.W.2d 644, 646-48 (Tex. 1985) (same); *Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 34-36 (Tex. 1977) (same); Open Records Decision No. 591 at 2-3 (1991) (addressing Health & Safety Code §§ 161.031, .032).

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

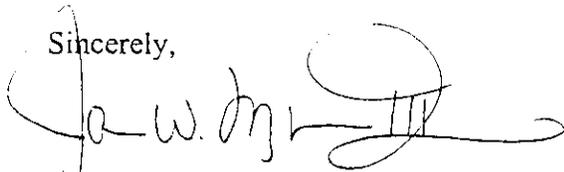
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rr

Ref: ID#146811

Encl: Submitted documents

cc: Ms. Sylvia Faltsek
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(w/o enclosures)