



November 14, 2002

Mr. Don Rogers  
Director, Communications Office  
Texas Department of Mental Health and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR2002-6487

Dear Mr. Rogers

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172196.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for the following information related to San Antonio State Hospital ("SASH"):

- Budgets, comprehensive financial statements, and audits for the past three fiscal years for [SASH];
- Any documents showing staffing levels for the past three fiscal years at [SASH];
- Any documents, e-mails, memos, reports, or other records, dating to Jan. 1, 2000 that complain of low staffing levels at [SASH]. Please include records written by hospital staff, government regulators, or other parties;
- Any safety audits or reports regarding the quality of patient care at [SASH] that have been compiled since Jan. 1, 1997. Please include records written by hospital staff, government regulators, or other parties;

- Any documents, e-mails, memos, reports, or other records, dating to Jan. 1, 1997 regarding individual patient deaths at [SASH]. Please omit names and other personal information for privacy reasons.

You state that most of the documents responsive to the request have been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is made confidential by statute. Subchapter D of chapter 161 of the Health and Safety Code governs medical committees and medical peer review committees. Section 161.031 defines a "medical committee" as including "any committee, including a joint committee, of . . . a hospital [or] medical organization" 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)-(2), (b). 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). 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). In interpreting the predecessor to this section, the Texas Supreme Court in *Jordan v. Court of Appeals*, 701 S.W.2d 644, 647-48 (Tex. 1985), stated that "the statutory language, 'records and proceedings' means those documents

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is 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.

generated by the committee in order to conduct open and thorough review. In general, this privilege extends to documents that have been prepared by or at the direction of the committee for committee purposes.” The *Jordan* court found that the privilege extends to “minutes of committee meetings, correspondence between members relating to the deliberation process and any final committee product, such as recommendations.” *Jordan*, 701 S.W.2d at 648.

You represent to this office that the submitted documents in Exhibit A relate to the proceedings of a medical committee in a health care facility, and that a portion of the submitted information was prepared by an investigating officer to provide information to the death review committee regarding the death of a patient. You inform us that departmental rules specify that the death review committee is a medical peer review body. 25 T.A.C. § 405.270(b). The submitted documents in Exhibit B comprise a sentinel event report, including root cause analysis, related to the death of a SASH patient, that indicate they were prepared for the Peer Review Committee for Sentinel Events. Based on your representations and our review of the documents in question, we agree that they constitute records, information, or reports of a medical committee under subchapter D of the Health and Safety Code and are therefore confidential under section 161.032(a) of the Health and Safety Code. We therefore conclude that this information is confidential under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code. Accordingly, the department must withhold the submitted documents from public disclosure. *See also Terrell State Hosp. v. Ashworth*, 794 S.W.2d 937 (TexApp.--Dallas 1990, mand. overr.) (applying Health & Safety Code § 161.032(a) to committee of state mental hospital); *Barnes v. Whittington*, 751 S.W.2d 493, 495-96 (Tex. 1988) (construing predecessor statute); *Jordan*, 701 S.W.2d at 646-48 (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 scope of Health & Safety Code §§ 161.031, 161.032).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 172196

Enc. Submitted documents

c: Mr. John Tedesco  
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(w/o enclosures)