



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2003

Mr. Edward M. Sosa
Chief Legal Officer
El Paso County
4815 Alameda, 8th Floor, Suite B
El Paso, Texas 79905

OR2003-5766

Dear Mr. Sosa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186110.

The R.E. Thomason General Hospital (the "Hospital"), owned and operated by the El Paso County Hospital District, received a request for information pertaining to Dr. Tatsuo Tomita's credentials and employment. You have included copies of the materials already released, but argue that the remainder of the responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This includes information made confidential by the Texas Occupations Code. Section 160.007 of the Occupations Code provides that "each proceeding or record of a medical peer review committee is confidential and any communication made to a medical peer review committee is privileged." Occ. Code § 160.007. Medical peer review is defined by the Medical Practice Act (the "MPA"), found at subtitle B of title 3 of the Occupations Code, to mean "the evaluation of medical and health care services, including evaluation of the qualifications of professional health care practitioners and of patient care rendered by those practitioners." Occ. Code § 151.002(a)(7). A medical peer review committee is defined as:

[A] committee of a health care entity, the governing board of a health care entity, or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body of 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....”

Occ. Code § 151.002(a)(8).

You indicate that the requested information consists of a physician’s application and supporting documentation for renewal of his clinical privileges to practice medicine at the Hospital. Because the requested information is maintained by the Thomason Hospital Medical Staff Credentials Committee (the “Committee”), a medical peer review committee, we find that the information is protected by medical peer review and medical committee confidentiality. See *St. Luke’s Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997); *Mem’l Hosp.–the Woodlands v. McCown*, 927 S.W.2d 1, 5 (Tex. 1996) (finding that review by medical staff committee of application for staff privileges qualifies as medical peer review because it necessarily involves review of physician’s qualifications, competence, and ethics). Consequently, the responsive information you have submitted must be withheld under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code.

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 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,



Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 186110

Enc: Submitted documents

c: Mr. Victor R. Parra
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(w/o enclosures)