



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2004

Mr. Donald Jansky
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756-3199

OR2004-7512

Dear Mr. Jansky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208384.

The Texas Department of Health (the "department") received two requests for (1) information pertaining to the trauma facility designation of Christus Spohn Hospital Alice (the "hospital") and (2) the trauma rating for the hospital on a specified date.¹ You state that some information will be released but claim that the submitted 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.

You acknowledge that the department failed to comply with section 552.301 of the Government Code in asking for this decision. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Additionally, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written

¹We note that the Texas Department of Health became part of the Texas Department of State Health Services on September 1, 2004. See <http://www.tdh.state.tx.us>.

request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the department received the first request for the submitted information on April 16, 2004. The department did not request a decision from this office or submit the information required under section 552.301(e) until June 30, 2004. Based on the foregoing, we conclude that the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Section 552.101 can provide a compelling reason to overcome the presumption of openness. *See Open Records Decision No. 630 (1994)* (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will therefore address your arguments under section 552.101.

You assert that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 773.095 of the Health and Safety Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Section 773.095 pertains to records of certain medical committees and provides:

- (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services and trauma care systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency medical services and trauma care system, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.
- (b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.
- (c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Health & Safety Code § 773.095. You inform us that the hospital's Trauma Services Committee is "the coordinating body for all of the hospital's trauma quality/performance improvement activities and the hospital's Trauma Performance Improvement Program." Upon review, we find that most of the information you seek to withhold under section 773.095 constitutes records relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency medical services and trauma care system, or emergency medical services personnel. Thus, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 773.095 of the Health and Safety Code.² However, you have not demonstrated, nor does the document itself reveal, that the "Alice Advisory Board Minutes" relate to the review, evaluation, or improvement of such services. Therefore, this document may not be withheld under section 552.101 in conjunction with section 773.095 of the Health and Safety Code.

You assert that the remaining submitted information is confidential under section 161.032 of the Health and Safety Code, which provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

.....

(c) 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.

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). Section 161.032 also provides, however, that "[t]his section [does] not apply to records made or maintained in the regular course of business by a hospital." *See id.* § 161.032(f). The phrase "records made or maintained in the regular course of business" has been construed to mean records that are neither created nor obtained in connection with a medical committee's deliberative proceedings. *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1, 9-10 (Tex.

²As we are able to make this determination, we do not address your remaining arguments against the disclosure of this information.

1996) (discussing *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988), and *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1985)).³

Upon review, we find that some of the information you seek to withhold under section 161.032 consists of records of the hospital's Trauma Services Committee. Thus, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 161.032 of the Health and Safety Code.⁴ However, we find that the "Alice Advisory Board Minutes" constitute a record maintained in the hospital's "regular course of business" for the purposes of section 161.032(f). Consequently, this document may not be withheld under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. As the department claims no other exceptions to disclosure for this document, it must be released.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with sections 773.095 and 161.032 of the Health and Safety Code. The remaining submitted information must be released to the requestor.

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

³Both *Barnes* and *Jordan* relied on the statutory predecessor to section 161.032 of the Health and Safety Code, section 3 of article 4447d, Vernon's Texas Civil Statutes, which provided in part that "records made or maintained in the regular course of business" were not confidential.

⁴As we are able to make this determination, we do not address your remaining arguments against the disclosure of this information.

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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 208384

Enc. Submitted documents

c: Ms. Angelina Beltran
The Edwards Law Firm, L.L.P.
P.O. Box 480
Corpus Christi, Texas 78403-0480
(w/o enclosures)

Ms. Gloria N. Rios, R.N.
Director of Quality & Case Management
Christus Spohn Hospital Alice
700 North Fournoy Road
Alice, Texas 78332
(w/o enclosures)