



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2005

Mr. Corbin Wilson
Assistant District Attorney
Tarrant County Criminal District Attorney's Office
Hospital District Office
1025 South Jennings, Suite 300
Fort Worth, Texas 76104

OR2005-06667

Dear Mr. Wilson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 228933.

The Tarrant County Hospital District (the "district") received a request for "the [John Peter Smith] Medical Staff Bylaws" and for "the minutes of the medical staff meeting" held on a specified date. You 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.

Initially, we note that you have not submitted the requested bylaws. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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. You assert that the 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). Section 161.031(a) defines a “medical committee” as “any committee . . . of (3) a university medical school or health science center” Section 161.031(b) provides that the ‘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.’ Section 161.0315 provides in relevant part that “[t]he governing body of a hospital, medical organization [or] university medical school or health science center . . . 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 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. 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)).¹

You state that “[t]he [submitted] minutes are the unapproved minutes from the Medical Staff Meeting held on April 26, 2005. The Medical Staff has not met again to read and approve these minutes. These unapproved minutes are marked confidential. The clear intent of the meeting and the minutes recording the meeting are that the meeting was to be conducted as a confidential meeting of the medical staff and not subject to disclosure.” You do not explain, however, how such records qualify as records of a medical committee that was established for the purpose of evaluating medical and health care services. We therefore conclude that you have failed to provide sufficient information for this office to conclude that the submitted minutes of the medical staff meeting are records of a medical committee, and

¹Both *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.

they may not be withheld under section 552.101 on that basis. Further, we find that the submitted medical staff meeting minutes constitute a record maintained in the district's "regular course of business" for the purposes of section 161.032(f). Consequently, the submitted information may not be withheld under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. As you make no other argument against disclosure, the 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 228933

Enc. Submitted documents

c: Mr. Cal Chaney
General Counsel/Associate Executive Director, Policy
American College of Emergency Physicians
1125 Executive Circle
Irving, Texas 75038-2522
(w/o enclosures)