



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2007

Ms. Carolyn Foster
Assistant General Counsel
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2007-04289

Dear Ms. Foster:

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# 275894.

The Dallas County Hospital District, doing business as Parkland Health and Hospital System (the "system"), which you represent, received a request for the following information: (1) Hospital Discharge and Subsequent Readmission Audit, Report No. 2006-301; (2) Care Management Follow-up Audit No. 2007-005; (3) Integrity Line and Ethics Report, FY 2007 1st Quarter; and (4) any audits, reports, and letters related to possible Medicaid overcharges by the system to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services from 2006 and 2007. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.110, and 552.116 of the Government Code, as well as Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). The submitted information consists of completed audits, a completed report, and a completed investigation. Section 522.022 makes this information expressly public unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you seek to withhold the submitted information under sections 552.103, 552.107, and 552.116 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 52.103); Open Records Decision Nos. 76 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, sections 552.103, 552.107, and 552.116 are not other law that makes information confidential for the purposes of section 552.022. Therefore, the system may not withhold any of the submitted information under sections 552.103, 552.107, or 552.116. However, the Texas Supreme Court has held that the Texas Rules of Evidence and Texas Rules of Civil Procedure are other law within the meaning of section 552.022. *In re City of Georgetown*, 3 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under rule 503 and rule 192.5. In addition, you also claim that this information is subject to sections 52.101 and 552.110 of the Government Code. Because sections 552.101 and 552.110 constitute other law for purposes of section 552.022, we will address the applicability of these exceptions to the submitted information. We will also consider the system's claims under section 552.108.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ). You state that Exhibits 1 and 2 document communications between the system's attorneys and the system that were made in connection with the rendition of professional legal services to the system. You also state that the communications were intended to be confidential. Based on your representations and our review of the information at issue, the system may withhold Exhibits 1 and 2 on the basis of the attorney-client privilege under Texas Rule of Evidence 503.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You assert that Exhibit 3 is excepted from disclosure under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. Section 161.032 of the Health and Safety Code provides in relevant part:

(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, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

...

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital . . . [or] hospital district [.]

Health & Safety Code § 161.032(c), (f). Section 161.031(a) defines a “medical committee” as “any committee . . . of (1) a hospital. . . .” *Id.* § 161.031(a)(1). You state that the submitted report was “prepared at the direction the compliance officer for delivery by the compliance officer to the Audit and Compliance Committee of the Board of Managers in an effort to improve the quality of care at the hospital.” Further, you explain that, this report was “presented and addressed in an Executive Session of the Parkland Board of Managers Audit & Compliance Committee.” Based on your representations and our review, we conclude that Exhibit 3 consists of records, information, or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code. Accordingly, the system must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

The system asserts that Exhibit 4 is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision Nos. 474 at 4-5 (1987)*. Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body agency may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You inform us that the Office of the Inspector General for the Department of Health and Human Services objects to the release of Exhibit 4 because it pertains to an ongoing criminal investigation. Based on this representation, we conclude that the release of the information in Exhibit 4 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the system may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code.

In summary, the system may withhold Exhibits 1 and 2 on the basis of the attorney-client privilege under Texas Rule of Evidence 503. The system must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 161.032 of the Health

and Safety Code. The system may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'JLF', with a horizontal line extending to the right.

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jb

Ref: ID# 275894

Enc. Submitted documents

c: Ms. Sherry Jacobson
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)