



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2008

Mr. Allan S. Graves
Adams, Lynch, & Loftin, P.C.
3950 Highway 360
Grapevine, Texas 76051

OR2008-07092

Dear Mr. Graves:

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# 311000.

The Tarrant County Hospital District, d/b/a JPS Health Network, (the "district") received a request for information pertaining to the most recent certification of the district's trauma center by the American College of Surgeons ("ACS"). You state that you are releasing some information to the requestor. You claim that portions of the submitted verification visit report and all of the accompanying correspondence between the district and ACS are 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 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. This section encompasses information protected by other statutes. Section 161.032 of the Health and Safety Code 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.” *Id.* § 161.031(a). The term “medical committee” also includes “a committee . . . of one or more of the entities listed in Subsection (a).” *Id.* § 161.031(c). 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.” *Id.* § 161.0315(a).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48; *see also* Open Records Decision No. 591 (1991) (construing, among other things, statutory predecessor to section 161.032).

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You explain to this office that ACS is an organization responsible for accrediting hospital trauma centers, and you inform us that ACS’ Verification Review Committee assists hospitals in evaluating and improving trauma care by providing an objective, external review of each institution’s capability and performance. You state, and provide an affidavit from the district’s Senior Clinical Director of Emergency Services confirming, that the submitted documents were all “prepared for the purposes of ACS as a medical committee” under section 161.032 of the Health and Safety Code. Based on your arguments, we find that the ACS’ Verification Review Committee is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. *See* Health & Safety Code § 161.031(c); *see also* *Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.—San Antonio 1993, no pet.) (finding that Joint Commission on Accreditation of Healthcare Organizations is medical committee under section 161.031(a)(2) and its accreditation report of hospital is confidential under section 161.032). We also find that the portions of the submitted visit report that you have identified, as well as most of the submitted correspondence, are confidential under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.¹ However, we note that Exhibit H consists of a letter between two district doctors discussing the implementation of ACS’ recommendations. Although you state that Exhibit H was eventually attached to an e-mail sent to ACS as part of the reverification process, we find that you have failed to demonstrate that this internal district communication was prepared by ACS or at the direction of ACS. *See* *Jordan*, 701 S.W.2d at 648 (holding that the medical committee provision’s protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose”). Accordingly, Exhibit H is not confidential under section 161.032 of the Health and Safety Code and may not be withheld under section 552.101 of the Government Code.

¹We note that the district marked portions of the submitted visit report as “non-privileged/to be released.”

We note that the information you have marked for release contains e-mail addresses subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue, which we have marked, do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that their owners have affirmatively consented to the release of these e-mail addresses. Therefore, unless it receives consent for their release, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, except for Exhibit H and the information you have marked to be released, the district must withhold the submitted visit report and accompanying correspondence under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code. Unless it receives consent for their release, the district must also withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 311000

Enc. Submitted documents

c: Mr. Darren Barbee
Fort Worth Star Telegram
c/o Mr. Allan S. Graves
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(w/o enclosures)