



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2008

Mr. Neal W. Adams. Esq.
Adams, Lynch & Loftin, P.C.
3950 Highway 360
Grapevine, Texas 76051-6741

OR2008-08007

Dear Mr. Adams:

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# 313102.

The Tarrant County Hospital District d/b/a JPS Health Network (the "district"), which you represent, received a request for any and all reports related to an incident involving a named individual. You claim that some of the requested 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 although you take no position to the public availability of the information in Exhibit D, you indicate that the release of this information may implicate the privacy interests of the individual named in the request. Accordingly, you notified this individual of the request and of her right to submit arguments to this office explaining why this information should not be released. *See* Gov't Code § 552.304 (interested third party may submit written comments concerning disclosure of information).

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 other statutes. *See* Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

(Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You indicate that Exhibit D may involve the privacy interests of the individual named in the request. Upon review, we find that none of this information is highly intimate or embarrassing. Accordingly, the district may not withhold this information under section 552.101 on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses section 161.032 of the Health and Safety Code, which provides in part:

...

(c) Records, information, or reports of a medical committee, medical peer review committee, . . . and records, information, or reports provided by a medical committee, medical peer review committee, . . . to the governing body of a public hospital . . . are not subject to disclosure under Chapter 552, Government Code.

...

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code §161.032(c), (f). Section 161.031(a) defines a “medical committee” as “any committee, including a joint committee, of . . . a hospital [or] a medical organization[.]” *Id.* § 161.031(a). 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.” *Id.* § 161.031(b). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by Section 161.031, to evaluate medical and health care services . . .” *Id.* § 161.0315(a).

However, section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” *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, 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)).

You state that Exhibit C consists of a "Patient Complaint" report taken by an agent of the Medical Committee/Peer Review Committee, the agenda and minutes of the Patient Grievance Committee, and the related report to the District Compliance Committee. You state that "part of the function of the Medical Committee/Peer Review Committee is the review of Patient Complaints[.]" You assert that the submitted information is therefore confidential under section 161.032 of the Health and Safety Code. Based on your representations and our review of the submitted information, we agree that Exhibit C constitutes records of a medical peer review committee, or medical committee, and, thus, is confidential under section 161.032 of the Health and Safety Code. Accordingly, it must be withheld under section 552.101 of the Government 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 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 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,

A handwritten signature in black ink that reads "Henisha D. Anderson". The signature is written in a cursive style with a large, stylized "H" and "A".

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 313102

Enc. Submitted documents

c: Mr. Darren Barbee
Fort Worth Star-Telegram
c/o Mr. Neal W. Adams. Esq.
3950 Highway 360
Grapevine, Texas 76051-6741
(w/o enclosures)