



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 5, 2009

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

OR2009-05981

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# 341813 (DCHD 09-011(k)).

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "system") received a request for the results of a specified "spot-check inspection." You state some of the requested information was the subject of a previous open records ruling. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state, and provide documentation showing, you have notified an interested third party, The Joint Commission ("the commission"), of the request and of its opportunity to submit comments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-02973 (2009). As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the system must continue to rely Open Records Letter No. 2009-02973 as a previous determination with respect to the information previously requested and ruled upon. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument for the information not previously requested and ruled upon.

Section 552.101 of the Government Code excepts from required public 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, such as section 161.032 of the Health and Safety Code, which provides in relevant 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, including a joint 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. *See, e.g., 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. Protection does not extend to documents "gratuitously submitted to a committee" or "created without committee impetus and purpose." *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing, among other things, statutory predecessor to section 161.032).

You state the submitted information consists of results and recommendations prepared by the commission following a survey of the system's emergency department. In *Humana Hospital Corporation v. Spears-Petersen*, the court found that the commission is a medical committee under section 161.031(a)(2), and its accreditation report of a hospital is confidential under section 161.032.¹ *See Humana Hospital Corp. v. Spears-Petersen*, 867

¹You inform us the commission was formerly known as the Joint Commission on Accreditation of Healthcare Organizations.

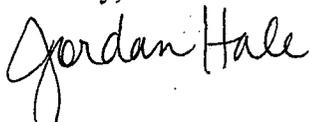
S.W.2d 858 (Tex. App.—San Antonio 1993, no pet.). Based on your representation and our review, we conclude the submitted information constitutes records, information, or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code. We therefore determine this information is confidential under section 161.032(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

In summary, the system must continue to rely on Open Records Letter No. 2009-02973 as a previous determination with respect to the information previously requested. The system must withhold the information not previously requested and ruled upon under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 341813

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)