



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2010

Ms. Nneka C. Egbuniwe
Deputy General Counsel
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2010-00645

Dear Ms. Egbuniwe:

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# 367118.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for documents relating to EMTALA violations, substantiated complaints found by Centers for Medicare and Medicaid Services, substantiated complaints found by the Texas Department of State Health Services, and communications between the district and several specified entities relating to a named employee.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the district received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify request).

²We assume that the "representative" sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 raise section 552.101 in conjunction with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d-1320d-8, for portions of the submitted information. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts.160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision Number 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov’t Code §§ 552.002, .003, .021. We, therefore, held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the district may not withhold any portion of the submitted information on this basis.

Section 552.101 also encompasses information protected by other statutes, including the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in

Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Based on your representation and our review, we agree that the information on pages 135-148 is subject to section 159.002 of the Occupations Code. Therefore, this information must be withheld under section 552.101 of the Government Code.³

Section 552.101 of the Government Code also encompasses section 160.007 of the Occupations Code, which provides in part:

(a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

Occ. Code § 160.007(a). Medical peer review is defined by the MPA to mean “the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners.” *Id.* § 151.002(a)(7). A medical peer review committee is “a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services[.]” *Id.* § 151.002(a)(8).

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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

....

(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(a), (c), (f). 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).

The district’s board of managers is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling and administering the district. The board provides authority to the medical advisory council to maintain, through the medical staff bylaws, a procedure for making recommendations concerning staff appointments and reappointments, as well as granting, reduction, suspension, and revocation of clinical privileges based on qualifications, experience, and professional competence. You state that the information in Exhibit C consists of electronic queries and verifications of either (1) information provided by the subject physician in his applications for appointment and reappointment or (2) exclusions lists the district is required to verify before entering into arrangements with a physician. You state that the documents in Exhibit C were obtained by district staff solely in support of and to verify information provided on a physician’s application for appointment or reappointment to the district’s medical staff. You state these documents were used by the district’s credentials committee, medical advisory council, and the board of managers in evaluating the qualifications of a professional health care practitioner. You state that the information obtained in these documents was utilized in

carrying out the deliberative, peer review, and medical committee activities of these committees. Upon review, we agree the information in Exhibit C consists of confidential records of a medical peer review committee under section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code. Accordingly, the district must withhold this information pursuant to section 552.101 of the Government Code.⁴

You also raise section 552.117 of the Government Code for some of the remaining information. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Although you have submitted a list of employees who made a request for confidentiality under section 552.024, we are unable to determine whether those elections were made prior to the date of the instant request. Accordingly, to the extent the employees to whom this information pertains timely elected confidentiality for this information under section 552.024, the district must withhold the information you have marked on pages 123-127 in Exhibit B under section 552.117(a)(1).

In summary, the district must withhold pages 135-148 in Exhibit B under section 552.101 in conjunction with the MPA. The district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. The district must withhold the information you have marked on pages 123-127 in Exhibit B under section 552.117 of the Government Code if the employees to whom this information pertains timely elected confidentiality for this information under section 552.024 of the Government 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,

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 367118

Enc. Submitted documents

c: Requestor
(w/o enclosures)