ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 13, 2010

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

OR2010-13878

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# 393303.

Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received two requests for (1) information related to cholecystectomy scheduling backlogs and (2) statistics about cholecystectomy errors. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state that the submitted documents may contain proprietary information of a third party subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the district notified University HealthSystem Consortium ("UHSC") of the request for information and of UHSC's right to submit arguments 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 exceptions you claim and reviewed the submitted representative sample of information.[1] We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

[1]We assume that the "representative sample" of information 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." Id. § 552.101. Section 552.101 encompasses information protected by other statutes, including section 161.032 of the Health and Safety Code, which 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, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].
>
> . . .
>
> (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 [or] hospital district[.]" *Id.* § 161.031(a)(1), (2), (6). Section 161.0315 provides in relevant part that "[t]he governing body of a hospital, medical organization [or] hospital district . . . 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 statutes, statutory predecessor to section 161.032).

The district's board of managers (the "board") is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling, and administering the district. You state one of the board's responsibilities is "[t]o establish, support, and oversee a system-wide performance improvement program." You inform us that, in furtherance of this duty, the board entrusts medical staff to establish and support committees and procedures to improve performance throughout the district. You assert that the information in Exhibit C consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code.

You state Exhibit C contains a document pertaining to the results of a review conducted by the Mortality and Morbidity Review Committee ("M&M committee"), a medical committee. You explain that the board established the M&M committee under the performance improvement plan in order to review incidents and deaths related to surgical procedures, identify risk factors, and develop action plans to manage and reduce or eliminate future, similar incidents. You state the document at issue was not prepared in the regular course of business but was "prepared to document the purposeful quality improvement activities of [the] committee." Based on your representations, we find the document at issue constitutes information of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code and is confidential under section 161.032(c) of the Health and Safety Code.

Next, you state Exhibit C contains "Patient Safety Net" reports ("PSNs") and documentation of review and analysis activities conducted within the district's quality assurance and risk management review process. You state the PSNs are generated by nurses and other health care providers "whenever an untoward occurrence is observed by or reported to [district] staff." You explain the Quality and Risk Management Committee of the board reviews the PSNs and staff recommendations in order to prevent adverse events from recurring. Additionally, you state PSNs and documentation are not prepared in the regular course of business and are part of a "deliberative process of identifying incidents involving patient care, evaluating their causes and severity, and making recommendations on how to remedy the situation and reduce the likelihood of recurrence." *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business).

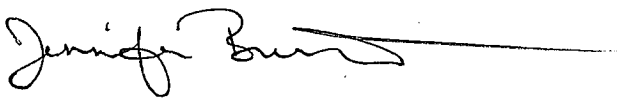
Finally, you state Exhibit C includes the Surgery Schedules Dashboard ("dashboard"). You explain the dashboard is used by the utilization management department to compile and analyze data to support the district's clinical areas in providing efficient, effective, and quality care to patients. You state that the utilization management department is governed by and reports to the board's Quality and Risk Management Committee "as part of the board's oversight of system-wide quality improvement activities." You explain that the dashboard, as well as the deliberative process of utilization management staff and their analyses, are part of the "quality assurance framework established under the [board's] performance improvement plan." You indicate the dashboard was created for committee purposes and, thus, is a confidential record of a medical committee. Based on your

representations and our review of the remaining information in Exhibit C, we find the district has established this information consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. Therefore, the district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.[2]

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 393303

Enc. Submitted documents

c: Requestors
(w/o enclosures)

---

[2]We note the requestor asserts the copy of the written comments sent to him were excessively redacted and conceal the arguments the district has made to this office. Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business-days of receiving the request for information. Gov't Code § 552.301(e-1). Regardless of whether the district failed to meet its section 552.301(e-1) requirement, section 552.101 is a mandatory exception that constitutes a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* at §§ 552.007,.352.