



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2010

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

OR2010-14406

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# 394529.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received two requests from the same requestor for the following categories of information: (1) the Accreditation Council for Graduate Medical Education (the "ACGME") site visitation report pertaining to the Physical Medicine & Rehabilitation residency program of the University of Texas Southwestern Medical Center at Dallas (the "university"), which will be sent to the district; (2) all communications between and among the district, the university, and ACGME in response to actions proposed by the ACGME in the specified report, including communications that will be sent to the ACGME in the future; (3) all previous ACGME reports and decisions sent to the district regarding site visits from residency departments; (4) all communications from the district or university related to previous ACGME visits during a specified period; and (5) information pertaining to any proposed changes taken in response to adverse decisions by the ACGME. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume 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.

Initially, you represent the district did not have any information responsive to categories 1 and 2 at the time the request was received. It is implicit in several provisions of the Act that the Act applies only to information already in existence. Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by this request consists of documents the district maintained or had a right of access to as of the date that it received these requests.

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, 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 . . . and records, information, or reports provided by a medical committee . . . 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 [,] 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. *Jordan*, 701 S.W.2d at 647-48. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Id.* at 648. Protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.*; *see also* Open Records Decision No. 591 (1991) (construing, among other statutes, statutory predecessor to section 161.032). However, this 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 statutory predecessor to section 161.032). We note that section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” Health & Safety Code § 161.032(f); *see Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business).

You state the submitted information was created and maintained on behalf of ACGME, which is an organization responsible for accrediting medical residency education programs. You represent the information at issue consists of correspondence from ACGME to the program directors of residency education programs sponsored by UTSW and provided by the district. You inform us ACGME develops and sets the standards for residency education programs and monitors these programs for compliance. Based on your arguments, we agree ACGME constitutes a medical committee as defined by section 161.031 *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). Therefore, we find the submitted information is confidential under section 161.032 is confidential and must be withheld under section 552.101 of the Government Code.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

²As our ruling is dispositive, we do not address your remaining argument.

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 Luttrall
Assistant Attorney General
Open Records Division

JL/ds

Ref: ID# 394529

Enc. Submitted documents

c: Requestor
(w/o enclosures)