



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2010

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

OR2010-14472

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# 395181.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received two requests for all signed and unsigned documents, contracts, memoranda, or agreements regarding employment, the rendering of professional services or fees, appointments, certifications, hospital and clinical privileges, and attestations pertaining to nine named individuals in connection with the University of Texas Southwestern Medical Center at Dallas and the district as a party under the Master Service Agreement ("MSA") since 2004.¹ The requests also seek lists of titles, positions, duties, offices held, and salaries for the nine named individuals. You state the district has released or will release some of the

¹We note the district sought and received clarification of the requests for information. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

responsive information.² You state you do not have some of the requested information.³ You claim 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.⁴ 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).

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 exception encompasses information protected by other statutes, such as section 160.007 of the Occupations Code. Section 160.007 provides, in relevant 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 Medical Practice Act, subtitle B of title 3 of the Occupations Code, 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).

²You state the requestor has previously received copies of the MSA and Master Affiliation Agreements, which contain portions of the requested information. However, the requestor states he has not received the information at issue. Whether the district actually provided the information at issue is a question of fact and this office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Thus, we assume the district has released the information at issue to the requestor. If not, the district must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

³The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

⁴We 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 those records contain substantially different types of information than that submitted to this office.

Section 161.032 of the Health and Safety Code 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, 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). 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).

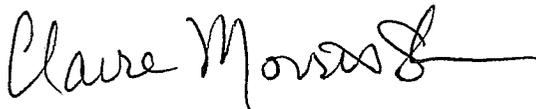
You inform us the district’s board of managers (the “board”) is appointed by the Dallas County Commissioners Court to carry out fiduciary and statutory responsibilities in managing, controlling, and administering the district. You state the board provides authority to the district’s medical advisory council to maintain, through the medical staff bylaws, “a complete procedure for making recommendations . . . concerning staff appointments and

reappointments, as well as granting, reduction, suspension, and revocation of clinical privileges based on the individual's qualifications, experience, and current professional competence." You state the information in Exhibit B consists of a Texas Standardized Credentialing Application and its addendum as well as other information related to the credentialing of a named physician. You explain the information at issue consists of documents from the credentialing and peer review file of one of the named individuals that were obtained by district staff exclusively in support of and to verify information provided on physicians' applications 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 in evaluating the qualifications of the physician at issue. You further state the information obtained in these documents form the basis for the deliberative, peer review, and medical committee activities of these committees. Based on your representations and our review, we agree Exhibit B 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. We therefore conclude the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code.⁵

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 395181

Enc. Submitted documents

c: Requestor
(w/o enclosures)