



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

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

OR2010-14971

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# 395461.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for any National Surgical Quality Improvement Program ("NSQIP") reports, including any reports by surgical subspecialty, specific procedures, and individual surgeons dealing with surgical care, since 2000 and any reports the district may currently produce from NSQIP data. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also indicate that release of the submitted information may implicate the proprietary interests of the American College of Surgeons ("ACS"). Accordingly, you notified ACS of this request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d). ACS responded to the notice. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

We note the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

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.

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The submitted information consists of completed reports made by or for the district. Therefore, this information is subject to subsection 552.022(a)(1). You claim this information is excepted from disclosure under section 552.111 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022. *See id.* § 552.007; Open Records Decision Nos. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information expressly confidential for the purposes of section 552.022, and the information at issue may not be withheld under that section. However, you also raise section 552.101 of the Government Code, which is "other law" that makes information confidential for the purposes of section 552.022. Accordingly, we will consider your arguments under this section.

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. Section 552.101 encompasses information protected by other statutes, such as 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, 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).

Both the district and ACS argue the submitted information constitutes confidential records of a medical committee. You inform us 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 in furtherance of this duty, the board maintains overall responsibility for the implementation and maintenance of the Performance Improvement Plan (the “PIP”). Further you state that, under the PIP, the board provides authority to medical staff to establish and support medical committees to carry out quality and performance improvement activities system-wide. You explain the Surgery Division Quality Committee (the “SDQC”) and the Quality Improvement Council (the “QIC”) are two such committees. You explain the SDQC is responsible for monitoring services and collecting, assessing, and analyzing quality of care data related to services provided by healthcare professionals in the district’s Surgery Division and the findings, conclusions, recommendations, planned actions, and follow-up of the SDQC are forwarded to the QIC and appropriate district personnel for assessment, analysis, and evaluation of the quality of patient care and process improvement activities. Similarly, you explain the QIC “serves to plan, prioritize, guide, and monitor multidisciplinary quality assessment/improvement and risk/safety management activities for the improvement in the delivery of optimal patient care at [the district].” Upon review, we agree the QIC and the SDQC are medical committees for purposes of section 161.032 of the Health and Safety Code.

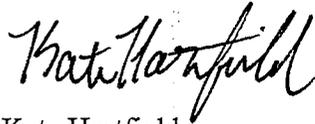
You state the NSQIP reports at issue are used by both the QIC and the SDQC as medical committees in their respective quality assurance and performance improvement activities. You further explain the submitted information is used in making administrative quality assurance and performance improvement decisions that affect the district’s operations system-wide. You state the information at issue was created by or for the QIC and SDQC and is used to develop recommendations and action items in response to identified issues. You state the information at issue is used wholly within the district’s quality assurance

performance improvement administrative and medical staff structure. Based on these representations and our review of the submitted information, we agree the information at issue consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. We therefore conclude the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety 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 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 395461

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David B. Hoyt
American College of Surgeons
633 North Saint Clair Street
Chicago, Illinois 60611-3211
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.