



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2011

Mr. Ryan S. Henry
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2011-00561

Dear Mr. Henry:

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# 405569.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland"), which you represent, received a request for all internal audit reports since 2005 regarding Women & Infant's Speciality Health or its units.¹ You state you will release some of the requested information upon payment of charges. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.139, and 552.150 of the Government Code, as well as privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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

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

Gov't Code § 552.022(a)(1). The submitted information consists of completed reports that are subject to section 552.022(a)(1). Parkland must release the submitted information pursuant to section 552.022 unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* You raise sections 552.101, 552.107, 552.139, and 552.150 of the Government Code, as well as the attorney-client privilege and the attorney work product privilege under the Texas Rules of Evidence and the Texas Rules of Civil Procedure, for the submitted information. Section 552.107 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107 is not other law that makes information confidential for the purposes of section 552.022(a)(1). Therefore, Parkland may not withhold any portion of the submitted information under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure for the information at issue. Further, because sections 552.101, 552.139, and 552.150 of the Government Code are other laws for purposes of section 552.022(a)(1), we will consider the applicability of these sections to the submitted information.

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 161.032 of the Health and Safety Code. Section 161.032 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] a health science center [or] a hospital district[.]” *Id.* § 161.031(a). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital, medical organization, university medical school or health science center, [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.* 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). We note 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 inform us the Audit & Compliance Committee (the “ACC”) and the Human Resources, Quality and Risk Management Committee (the “HRQPMC”) are quality assurance committees under the peer review organization of Parkland. You have submitted organizational documents showing the ACC and the HRQPMC are standing committees authorized by Parkland’s Board of Managers (the “board”) to make recommendations to the board pertaining to staffing needs, the budget, employee benefits, and performance improvement and quality and risk management activities. Upon review, we agree the ACC and the HRQPMC are medical committees of a hospital district for purposes of section 161.032 of the Health and Safety Code.

You state Exhibit G consists of records, information, and reports of a medical committee pertaining to Parkland's quality assurance programs. You state the information at issue does not deal with the day-to-day operations or the financial information of Parkland. Rather, you state the information at issue deals with specific evaluations, some system-wide and others targeted for specific departments or systems. Thus, you state the information at issue is part of Parkland's continuous evaluation of quality control and the medical review process. Based on your representations and our review, we agree Exhibit G consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. Accordingly, Parkland must withhold Exhibit G pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182 provides in part:

(a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code § 418.182(a). The fact that information may generally be related to a risk or vulnerability assessment, critical infrastructure, or a security system does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert Exhibit F pertains to "security operations, training, procedures and guidelines for [Parkland] for the safety of employees as well as for patients and the public in general." You further state Exhibit F relates to computer and physical location vulnerabilities. You explain the information at issue is a comprehensive list of security issues. Thus, you argue release of the information at issue could expose Parkland to security breaches and jeopardize the safety of employees, patients, and equipment. Upon review, we find the information at issue relates to the specifications and location of security systems used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.— Austin 2010, no pet. h.) (case construing section 418.182 of the HSA, which ruled the recorded images necessarily relate to the specifications of the security system that recorded them). Accordingly, Parkland must

withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.²

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions

²As our ruling is dispositive with respect to this information, we need not address your remaining argument against its disclosure.

to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state Exhibit E consists of communications between Parkland and its attorneys, including documents that were produced by attorneys who were hired to give legal opinions and advice in their capacities as attorneys for Parkland, and information provided to attorneys to elicit legal advice. You indicate these communications were confidential, and you do not indicate Parkland has waived the confidentiality of the information at issue. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to Exhibit E. Accordingly, Parkland may withhold Exhibit E under rule 503 of the Texas Rules of Evidence.³

In summary, Parkland must withhold (1) Exhibit G under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code, and (2) Exhibit F under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. Parkland may withhold Exhibit E under rule 503 of the Texas Rules of Evidence.

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/tf

³As our ruling is dispositive with respect to the information at issue, we need not address your remaining argument against its disclosure.

Ref: ID# 405569

Enc. Submitted documents

c: Requestor
(w/o enclosures)