



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2011

Ms. Barbara H. Owens
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2011-01749

Dear Ms. Owens:

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# 408215 (DSHS File 108084-681SAS-2011).

The Texas Department of State Health Services (the "department") received a request for specified reports created by the requestor's client, a specified quality assurance report and related investigative documents, a specified Adult Protective Services investigation and any related witness statements, any investigative reports generated in connection with the termination of the requestor's client, the requestor's client's personnel file, and information pertaining to a specified disciplinary action involving a named employee. You state the department has released or will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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 other statutes make confidential, such as section 161.032 of the Health and Safety Code. Section 161.032 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 [or] medical peer review committee, . . . and records, information, or reports provided by a medical committee [or] medical peer review committee . . . to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a), (c). A “medical committee” is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See id.* § 161.031(a). The term also encompasses “a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031(b).

The precise scope of section 161.032 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. 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 assert that the information you have marked consists of records of the Peer Review Committee for Sentinel Events (the “committee”), which you state is a medical committee. You state the marked information was prepared for use of the committee. You also state the information at issue was not prepared in the regular course of business, but rather, was created by the Quality Management Director of the hospital at issue at the direction of the hospital’s superintendent and the committee. Upon review, we agree the committee constitutes a medical committee as defined by section 161.031 and find that the information you have marked under section 161.032 consists of records and proceedings of a medical committee that are confidential. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code.

Section 552.101 also encompasses Chapter 48 of the Human Resources Code, which regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. Section 48.101 states in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under [chapter 48];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services¹] or investigating state agency rule and applicable federal law.

...

(d) The executive commissioner shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. [The Texas Department of Family and Protective Services] or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

Hum. Res. Code § 48.101(a), (b), (d). You state the remaining information, which you have marked, was used by the department in an investigation of abuse, neglect, or exploitation of an elderly or disabled person under chapter 48. *See id.* §§ 48.002(a)(2), (3), (4) (defining "abuse," "neglect," and "exploitation" for the purposes of chapter 48), .002(a)(1), (8) (defining "elderly" and "disabled person" for the purposes of chapter 48). We note that such information must not be released to the public, except for a purpose consistent with

¹In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

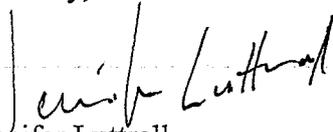
chapter 48 or as provided by a department or investigating state agency rule or federal law. Based on your representations and our review, we agree the information you have marked is confidential under section 48.101. You further state the requestor does not have a right of access to this marked information. *See id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. Accordingly, we conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

In summary, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code and section 48.101 of the Human Resources Code.

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 Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 408215

Enc. Submitted documents

c: Requestor
(w/o enclosures)