



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2011

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

OR2011-02241

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# 409531.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for six categories of information related to births during a specified time period.¹ You assert some of the requested information is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The district sought and received clarification from the requestor regarding this request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

²We assume that the "representative sample" of information 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.

You contend that, pursuant to section 181.006 of the Health and Safety Code, the requested information is not public information subject to the Act. Section 181.006 states that:

For a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Subsection 181.006(2) does not remove protected health information from the Act's application, but rather states this information is "not public information and is not subject to disclosure under [the Act]." We interpret this to mean a covered entity's protected health information is subject to the Act's application. Furthermore, this statute, when demonstrated to be applicable, makes confidential the information it covers. Thus, we will consider your arguments for this information.

We address your claim under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code, as it is potentially the most encompassing. 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, 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, 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)(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. 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). 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 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 one of the board’s responsibilities is “[t]o establish, support, and oversee a system-wide performance improvement program.” You inform us that, in furtherance of this duty, the board is responsible for the implementation and maintenance of the Performance Improvement Plan (“PIP”). Further, you state 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 two such committees are the Quality Improvement Council (“QIC”) and Obstetrics Performance Improvement Committee (“OBPIC”). You inform us the OBPIC collects, assesses, and analyzes quality of care data related to services provided by district’s Obstetrics Department. You further inform us the OBPIC’s findings are forwarded to the QIC for further assessment, analysis, and evaluation. You state the QIC serves “to plan, prioritize, guide, and monitor [multi-disciplinary] quality assessment/improvement and risk/safety management activities for the improvement in the delivery of optimal patient care.” Based

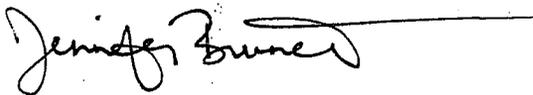
on your representations, we agree the QIC and OBPIC are medical committees as defined by section 161.031 of the Health and Safety Code.

You state the information at issue is "collected, prepared, and monitored as part of the purposeful quality improvement activities" of a medical committee and was not created in the ordinary course of business. You explain the requested information consists of information created or collected on behalf of, presented to, and reviewed by the OBPIC in carrying out its duties under the PIP, and is used by the OBPIC and QIC to maintain quality control and quality improvement directives. Based on your representations and our review, we find the district has established the requested information consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. Therefore, the district must withhold the requested information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 Burnett
Assistant Attorney General
Open Records Division

JB/vb

Ref: ID# 409531

Enc. Submitted documents

c: Requestor
(w/o enclosures)