



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 9, 2011

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

OR2011-03282

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# 411371.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for "all weekly shift reports prepared for labor and delivery nursing staff since Jan. 1, 2010." You state the district will be releasing some of the requested information, with redactions made in accordance with the previous determination in Open Records Decision No. 684 (2009).<sup>1</sup> 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.

Initially, we note the submitted information includes security codes and computer passwords. The Act is applicable to "public information," which section 552.002 of the Government Code defines as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

information made public under section 552.021 of the Government Code. Based on the reasoning in this decision and our review of the information at issue, we determine the security codes and computer passwords we have marked do not constitute public information under section 552.002 of the Government Code. Accordingly, the security codes and computer passwords are not subject to the Act and the district is not required to release this information, which we have marked, in response to this request.<sup>2</sup>

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 section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portion of the submitted information that constitutes medical records and that the district may only release in accordance with the MPA.<sup>3</sup>

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<sup>2</sup>As our ruling is dispositive, we do not address your argument to withhold this information under the Act.

<sup>3</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

Section 552.101 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(a) provides the following:

Except as provided by Subsections (b) and (c), information, 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 the submitted information revealing the location of an emergency elevator key-card is confidential under section 418.182(a). You explain this information would allow the public access to an emergency code access key and elevator access key. Upon review, we find you have established the information revealing the location of the security access card, which we have marked, 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. *See generally* *Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (case construing section 418.182 of the HSA, which ruled recorded images necessarily relate to specifications of security system that recorded them). Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. However, we find the district has not established any of the remaining information at issue 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; thus, none of the remaining information is confidential under section 418.182(a), and the district may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses section 161.032 of the Health and Safety Code, which provides in part the following:

(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, 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); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977). 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 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 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 two such committees are the Quality Improvement Council (the “QIC”) and the Obstetrics Performance Improvement Committee (the “OB PIC”), which is a subcommittee of the WISH Division Quality Committee. You explain “[t]he 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 at [the district].” You also explain the OB PIC is a standing committee established by the board responsible for “monitoring services and collecting, assessing, and analyzing quality of care data related to services provided by healthcare professionals in [the district’s] Obstetrics Department.” Upon review, we agree the QIC and the OB PIC are medical committees for the purposes of section 161.032 of the Health and Safety Code.

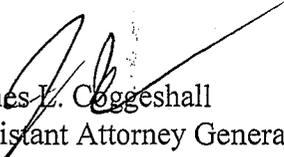
You explain some of the remaining information consists of statistical data and documents related to breast-feeding activities. You assert this information was created or collected on behalf of, presented to, and reviewed by the OB PIC in carrying out its duties under the PIP. You state the statistics are kept pursuant to the Perinatal Core Measures and are intended to be used for future quality assurance directives. You also assert the submitted Quality Improvement Algorithm Protocol “is a specifically designed quality assurance mechanism utilized as a test protocol and reports were to be sent back to the [c]ommittees.” Based on these representations and our review of the submitted information, we agree this information 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 this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. You assert some of the remaining information is also confidential under section 161.032. However, upon review, we find you have failed to demonstrate how this information, which consists of staff notices, staff updates, and shift reports, was not created in the regular course of business. *See Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (regular course of business means “records kept in connection with the treatment of . . . individual patients as well as the business and administrative files and papers apart from committee deliberations” and privilege does not prevent discovery of material presented to hospital committee if otherwise available and “offered or proved by means apart from the record of the committee.” (quoting *Texarkana Memorial Hosp.*, 551 S.W.2d at 35-6)). Therefore, we find you have not established the remaining information is confidential under section 161.032, and the district may not withhold it under section 552.101 on that ground.

To conclude, the district is not required to release the security codes and computer passwords we have marked in response to this request to the request for information. The district may only release the marked medical records in accordance with the MPA. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code and section 161.032 of the Health and Safety Code. The district must release the remaining information.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tf

Ref: ID# 411371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)