



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2011

Ms. Neera Chatterjee
Attorney and Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2011-04519

Dear Ms. Chatterjee:

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# 413340 (OGC# 134898).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for information regarding a named individual. You state the university has released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and reviewed comments submitted by the requestor's representative. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

The requestor has excluded from his request information that would identify patients of the named individual, and the named individual's social security number and personal banking information. Thus, these types of information are not responsive to this request. This ruling

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

does not address the public availability of any information that is not responsive to the request, and the university need not release such 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 section encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code, which 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 university medical school or health science center [or] a hospital district[.]” *Id.* § 161.031(a). Section 161.0315 provides 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., Mem’l 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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Mem’l Hosp.*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor’s Hosp. v. West*, 765 S.W.2d 812, 814 (Tex. App.—Houston [1st Dist.] 1988). 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.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). Additionally, 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 also Mem’l Hosp.*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 is clear signal records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business). The phrase “records made or maintained in the regular course of business” has been construed to mean records that are neither created nor obtained in connection with a medical committee’s deliberative proceedings. *See Mem’l Hosp.*, 927 S.W.2d at 10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

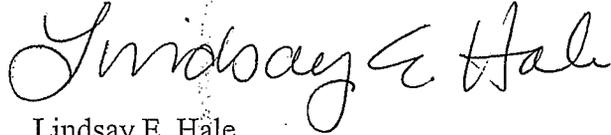
You state the Credentialing and Privileges Committee (the “committee”) makes recommendations to the university’s Hospital Board regarding “whether particular health care providers should receive credentials and privileges at the [u]niversity’s hospitals[.]” Based on your representation and upon our review, we agree the committee constitutes a medical committee for the purposes of section 161.032 of the Health and Safety Code. You also state the information at issue was prepared by, submitted to, obtained by, or reviewed by the committee for the purpose of assessing the named individual seeking credentialing and privileges at the university’s hospitals. We understand the committee utilizes this information in making its recommendations to the Medical Services Research and Development Board and the University Hospital Board. The requestor’s representative argues that the university does not demonstrate that the information at issue was “prepared by or at the direction” of the peer review committee and, thus, the protection of the statute at issue does not extend to the requested information. Upon our review of the information and after careful consideration of the requestor’s representative’s comments, we determine the information at issue constitutes confidential records of a medical peer review committee under section 161.032 of the Health and Safety Code and was not created and is not maintained in the regular course of business. *See Mem’l Hosp.*, 927 S.W.2d at 8-11 (records maintained by medical committee in connection with credentialing process are not maintained in the regular course of business and are confidential under section 161.032). Thus, this information is within the scope of section 161.032 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. As our ruling is dispositive, we need not address the university’s remaining arguments.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 413340

Enc. Submitted documents

c: Requestor
(w/o enclosures)