



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2011

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

OR2011-05009

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# 412641.

The Dallas County Hospital District d/b/a Parkland Health and Hospital system (the "system"), which you represent, received a request for all documents, including e-mails and memorandum, related to any remodeling done to the system's psychiatric unit in response to a specified event.¹ You state you will make some of the responsive information available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.111, 552.139, and 552.150 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You state that the system received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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

Initially, we note a portion of the submitted information was created after the request was received. This information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the system is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code exempts 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 that is made confidential by other statutes. The system raises section 552.101 in conjunction with provisions of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code.³ Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.177 provides that information is confidential if it:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.181 provides as follows:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181; *see generally id.* § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation"). 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.

³The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

Id. § 418.182(a)-(b). The fact information may be related to a governmental body's critical infrastructure or security concerns does not make such 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). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). We understand the system hospital's psychiatric unit constitutes critical infrastructure for purposes of the HSA. *See generally id.* § 421.001.

You assert Exhibits F and G pertain to "security operations, training, procedures and guidelines for [the system] for the safety of employees as well as for patients and the public in general." You state Exhibits F and G relate to computer and physical location vulnerabilities. You further assert this information would allow the public access to the various remodeling efforts of the system's psychiatric unit and reveal potential security threats, including all security equipment, blue prints, and technical manuals that relate to the specifications, operating procedures, or locations of a security system used to protect public or private property from an act of terrorism or related criminal activity. Upon review, we find portions Exhibits F and Exhibit G identify the technical details of particular vulnerabilities of the system's psychiatric unit to an act of terrorism. We find portions of the submitted information in Exhibits F and G relate 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). Additionally, we find portions of Exhibits F and G relate to assessments of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Accordingly, the system must withhold the information at issue, unless otherwise indicated, under section 552.101 of the Government Code in conjunction with sections 418.177, 418.181, and 418.182(a) of the Government Code.⁴ However, we find the system failed to establish how any of the remaining information within Exhibit F identifies the technical details of particular vulnerabilities of the system's psychiatric unit or 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. Additionally, we find the system has failed to demonstrate how any of the remaining information relates

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

to assessments of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. Consequently, the system may not withhold any of the remaining information in Exhibit F under section 552.101 in conjunction with section 418.177, 418.181, or 418.182 of the Government Code.⁵

Section 552.101 of the Government Code 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); *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

⁵We note our discussion of sections 418.177, 418.181, and 418.182 does not encompass the submitted medical committee documents, which we have marked as confidential under section 552.101 of the Government Code in conjunction with 161.032 of the Health and Safety Code.

impetus and purpose.” *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to section 161.032).

The system’s Board of Managers (the “board”) is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling, and administering the system. We understand that 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 one such committee is the Quality Improvement Council (the “QIC”). You state “[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 system].” Upon review, we agree the QIC is a medical committee for the purposes of section 161.032 of the Health and Safety Code.

You explain some of the remaining information in Exhibit F consists of documents provided to QIC and pertains to renovations that “were performed as efforts to improve patient care quality, which include patient safety and patient treatment.” You assert this information was created or collected on behalf of, presented to, and reviewed by the QIC in carrying out its duties under the PIP. Based on these representations and our review of the remaining information, we agree portions of this information consist of confidential records of a medical committee under section 161.032 of the Health and Safety Code. We therefore conclude the system 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.⁶ However, upon review, we find you have failed to demonstrate how the remaining information in Exhibit F 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 in Exhibit F is confidential under section 161.032, and the system may not withhold it under section 552.101 on that basis.

You assert the remaining information in Exhibit F is excepted from disclosure under section 552.139 of the Government Code. Section 552.139 of the Government Code provides:

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

- (1) a computer network vulnerability report; and
- (2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use.

Gov't Code § 552.139. Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state the remaining information in Exhibit F includes "the proper operation and security protocols for entry and badge systems." Upon review of the remaining information at issue, we conclude it is not information excepted under section 552.139. Thus, the system may not withhold any of the remaining information at issue under section 552.139 of the Government Code.

The system generally asserts section 552.150 for the remaining information in Exhibit F. Section 552.150 of the Government Code provides that information held by a hospital district relating to a hospital district employee or officer is excepted from public disclosure provided (1) it is information that, if disclosed under the specific circumstances pertaining to the

individual, could reasonably be expected to compromise the safety of the individual; and (2) the employee or officer makes a written application in accordance with section 552.150(a)(2) to the hospital district's officer for public information to have the information withheld from public disclosure under this section. *Id.* § 552.150. You have not demonstrated, however, and it is not otherwise clear to this office, how or why any of the remaining information in Exhibit F would be subject to section 552.150. Therefore, the system may not withhold any of the remaining information under section 552.150 of the Government Code.

In summary, except as we have marked for release, the system must withhold the submitted information under section 552.101 of the Government Code in conjunction with sections 418.177, 481.181 and 418.182 of the Government Code. The system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The remaining information must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/em

Ref: ID#412641

Enc. Submitted documents

c: Requestor
(w/o enclosures)