



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2011

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OR2011-17299

Dear Mr. Henry and Ms. Higginbotham:

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# 437348.

The Dallas County Hospital District d/b/a Parkland Health and Hospital system (the "district"), which you represent, received a request for the results of the Nurse Staffing Committee's evaluations of a specified nurse services staffing plan.¹ You claim the

¹You inform us the district asked for and received clarification of the request. See Gov't Code § 552.222(b) (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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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. Section 552.101 encompasses information that other statutes make confidential. Section 161.032 of the Health and Safety Code 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 district [.]” *Id.* § 161.031(a). Section 161.0315 provides that “[t]he governing body of a . . . 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 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 district[.]” Health & Safety Code § 161.032(f); *see McCown*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to section 160.007 of Occupations Code 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). 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 McCown*, 927 S.W.2d at 9-10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

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 inform us one the board’s responsibilities is to establish, support, and oversee a system-wide performance improvement program. You also inform us that, in furtherance of this responsibility, the “[b]oard maintains overall responsibility for the implementation and maintenance of Quality Assurance Committees.” You state the board provides authority to quality assurance committees to carry out quality and performance improvement activities system-wide. We understand the board organized the Quality Assurance/Improvement Committee (the “QAIC”) under this structure and this committee carries out the functions of this part of the board’s responsibilities. Based on your representations and our review, we agree the QAIC is a medical committee for the purposes of section 161.032.

You inform us the submitted information was provided to and reviewed by the QAIC and pertains to the district’s nurse staffing plan. Further, you inform us this information was prepared for and provided to the QAIC in furtherance of the board’s overall quality assurance responsibilities. You state the information was not prepared in the regular course of business. Based on these representations and our review, we agree the submitted information consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 437348

Enc. Submitted documents

c: Requestor
(w/o enclosures)