



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2011

Ms. Erin Higginbotham
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon Drive
Austin, Texas 78745

OR2011-17940

Dear 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# 438098.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district"), which you represent, received a request for all information pertaining to a named physician formerly employed by the district.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the representative of the named physician. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code. Section 161.032 provides, in relevant part:

- (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

¹We note the district asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see 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).

...

(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). 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).

You assert the submitted information constitutes confidential records of medical committees. You inform us the district’s board of managers (the “board”) is appointed by the Dallas County Commissioners Court to carry out fiduciary and statutory responsibilities in managing, controlling, and administering the district. You state the board provides authority to the district’s medical advisory council to maintain, through the medical staff bylaws, “a complete procedure for making recommendations . . . concerning staff appointments and reappointments, as well as granting, reduction, suspension, and revocation of clinical privileges based on the individual’s qualifications, experience, and current professional competence.” You explain that as part of the medical staff appointment and reappointment process delineated in the Medical Staff Bylaws, staff working the Medical Staff Services

Office obtain each physician's demographic data and verifications of the physician's education, training, work history, and references. The staff then completes the application and presents it to the Credentials Committee for review. If the Credentials Committee approves the application, it is recommended to the Medical Advisory Council and, ultimately, the board for final action. Based on your representations, we agree the Credentials Committee is a medical committee as defined by section 161.031 of the Health and Safety Code.

You state most of the information in Exhibit E consists of Texas Standardized Credentialing Applications and their addenda as well as other information related to the credentialing of the named physician from the credentialing file of the named physician. You state the information was created and obtained by district staff exclusively in support of and to verify information provided on the physician's applications for appointment or reappointment to the district's medical staff. You state these documents were created and collected on behalf of the Credentials Committee and used in evaluating the qualifications of the physician at issue. Based on your representations and our review, we agree the information at issue consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. Accordingly, the district must withhold this information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety.²

You also 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 one such committee is the Quality Improvement Committee. You state the purpose of this committee is to identify incidents involving patient care, evaluate their causes and severity, and make recommendations on how to remedy the situation and reduce the likelihood of reoccurrence. Based on your representations, we agree the Quality Improvement Committee is a medical committee as defined by section 161.031 of the Health and Safety Code.

You explain the remaining information in Exhibit E consists of a report and supporting information pertaining to an incident involving patient care and includes the evaluation of the event reported, review of relevant medical reports and other reports, and recommendations for how to prevent such events in the future. You state the information at issue was not prepared in the regular course of business but was gathered for inclusion in a periodic report to the Quality Improvement Committee. Based on your representations and our review, we find the remaining information in Exhibit E consists of confidential records

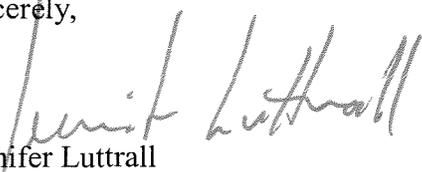
²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

of a medical committee under section 161.032 of the Health and Safety Code. Accordingly, the district must withhold this information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.³

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 Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 438098

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Denton, Texas 76209
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.