



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2012

Ms. Thao La
Senior Attorney
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2012-07719

Dear Ms. La:

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# 454458.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received two requests from the same requestor for consultant reports cited in the 2004 Health Management Associates study regarding the district and final reports or studies prepared for the district by a specified third party. You state the district does not have any final reports or studies prepared by the specified third party. You further indicate the district was only able to locate one final report cited in the 2004 study as well as portions of draft or interim reports cited in the 2004 study.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 the requestor specifically excluded draft reports from the portion of his request seeking final reports or studies prepared by the specified third party. You have submitted draft reports and working papers prepared by the specified third party. You acknowledge such information, which we have marked, is not responsive to the present request. This decision does not address the public availability of the non-responsive information and the district need not release such information in response to the present request.

Next, we note a portion of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body; except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). A portion of the submitted information consists of a final report prepared for the district by a consultant. The district may only withhold a completed report if it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Although you raise section 552.111 as an exception to disclosure of the final report, section 552.111 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). Accordingly, the district may not withhold the information subject to section 552.022(a)(1) under section 552.111 of the Government Code. However, you also raise section 552.101 as an exception to disclosure of this information, which protects information made confidential under other law. Accordingly, we will consider the applicability of section 552.101 to the responsive information. We will also consider your claim under section 552.111 for the information not subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 161.032 of the Health and Safety Code, which provides, in 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 section 161.032, 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 section 161.032 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,” but does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *See Jordan*, 701 S.W.2d at 647-48; *see* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health and Safety Code § 161.032). 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 McCown*, 927 S.W.2d at 10 (stating reference to statutory predecessor to Occ. Code § 160.007 in Health and Safety Code § 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.

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 inform us one of the board’s responsibilities is to establish, support, and oversee a system-wide performance improvement program and in furtherance of this responsibility, the board maintains overall responsibility for the implementation and maintenance of performance improvement initiatives. You also state the board has the

authority to appoint itself as a medical committee and passed a resolution on November 22, 2011 doing so. You further state the board makes ultimate determinations on quality and performance improvement. Based on these representations and our review, we agree the board is a medical committee for purposes of section 161.032.

You inform us the responsive information consists of consultants' reports or draft reports. You state the board entered into contracts with these consultants who are considered to be members of the district's medical committee. You state the responsive information was developed for the medical committee for the purpose of quality assurance and improvement through a review of the health care services, operations, and personnel providing such services at the district. You further state the responsive information was shared with the board. Based on these representations and our review, we agree the responsive information consists of the 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.³

You ask this office to issue a previous determination allowing the district to withhold records related to consultant reports by the specified third party and the consultant reports cited in the 2004 Health Management Associates study without the necessity of requesting a decision from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

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

Ref: ID# 454458

Enc. Submitted documents

c: Requestor
(w/o enclosures)