



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2013

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

OR2013-11366

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# 492244 (DCHD No. 13-58).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for several categories of information pertaining to a specified study involving the University of Texas Southwestern Medical Center (the "university"). We understand you to assert the district does not have some of the requested information.¹ You also state you are releasing a portion of the information that is in the district's possession. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You state that you have notified the university of the instant request for information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the university. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the university has submitted certain information to this office as responsive to the request and seeks a ruling with regard to this information. However, the district has

¹The 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).

not submitted this information to this office for review, and informs us the information it has submitted is “all of the responsive documents that the [district] has been able to locate. In the event, however, additional documents are located, the submitted documents constitute a representative sample.” Accordingly, this ruling does not address this information submitted by the university, and is limited to the information submitted as responsive by the district. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). However, we note the documents at issue submitted by the university involve correspondence between district and university personnel that appears to be responsive to the request received by the district. We further find the information at issue submitted by district is not representative of the correspondence at issue submitted by the university. Thus, to the extent the district maintains responsive correspondence between district and university personnel, the district must release such information to the requestor immediately if it has not done so already. *See* Gov’t Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000). In addition, we note the requestor has excluded from her request the names of patients. Thus, patient names are not responsive to the request and need not be released to the requestor.

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. Section 552.101 encompasses 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, . . . and records, information, or reports provided by a medical committee, medical peer review committee, . . . to the governing body of a public hospital . . . 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) (footnote omitted). Section 161.031(a) defines a “medical committee” as “any committee . . . of . . . (3) a university medical school or health science center[.]” *Id.* § 161.031(a)(3). Section 161.0315 provides “[t]he governing body of

a hospital [or] university medical school or health science center . . . may form . . . a medical peer review committee, as defined by Section 151.002, Occupations Code, or 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 “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 also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health and Safety Code § 161.032). Further, section 161.032 does not make confidential “records made or maintained in the regular course of business by a . . . university medical center or health science center[.]” Health & Safety Code § 161.032(f); *see also McCown*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 of the Health and Safety Code 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 McCown*, 927 S.W.2d at 9-10.

The university asserts that the responsive documents at issue consist of records prepared for or at the direction of the university’s Institutional Review Board (the “IRB”). The university states that the IRB is a medical committee established pursuant to federal law in order “to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving human subjects.”² 21 C.F.R. § 56.102(g). We have previously found, on multiple occasions, the university’s IRB is a medical committee for purposes of section 161.032. The university explains this committee is charged with “reviewing and approving research involving human subjects” at the district’s Parkland hospital and other affiliated hospitals.³

²*See* 42 U.S.C. § 289(a) (providing that Secretary of Health and Human Services shall by regulation require that each entity which applies for grant, contract, or cooperative agreement for any project or program which involves conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to Secretary that it has established “Institutional Review Board” to review biomedical and behavioral research involving human subjects conducted at or supported by such entity).

³The university informs us that, pursuant to a Master Services Agreement between the district and the university, the university contracts its employed faculty physicians to provide medical services to the district’s patients, supervise resident physicians, and provide medical directorship and other administrative services for the various clinical departments at district facilities.

Based on these representations and our review of the information at issue, we conclude the district must withhold the submitted responsive information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.⁴

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.texasattorneygeneral.gov/open_orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 492244

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701
(w/o enclosures)

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure.