



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2013

Mr. Timothy E. Bray
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2013-13494

Dear Mr. Bray:

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# 495288 (DSHS OR File: 21602/2013).

The Texas Department of State Health Services (the "department") received a request for all life safety code inspections conducted at the Austin State Hospital (the "hospital") during a specified period of time. You claim the 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. We have also received and considered comments from an attorney representing the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's argument that the department failed to comply with the Act's procedural requirements under section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See id.* § 552.301(b). You state the department received the request for information from the requestor on May 7, 2013. We note state the department sought and received clarification of the request from the requestor on May 15, 2013. *See id.* § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request). We have no indication the department did not act in good faith in seeking clarification of the request. Accordingly, based on the submitted documentation, the department's ten-business-day period under section 552.301(b)

commenced on May 15, 2013, the date of the department's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding 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). We note the department was closed on May 27, 2013. Consequently, the department's ten-business-day deadline was May 30, 2013. You certify the department placed the information required by subsection 552.301(b) in interagency mail on May 29, 2013. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the department complied with the procedural requirements of section 552.301 in submitting the information required by subsection 552.301(b).

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 section encompasses information protected by other statutes, such as 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, 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). A "medical committee" is any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See id.* § 161.031(a). The term also encompasses "a committee appointed *ad hoc* to conduct a specific investigation or established under state or

federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031(b) (emphasis added).

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 “documents generated by the committee in order to conduct open and thorough review” are confidential. *Mem’l Hosp.*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor’s Hosp. v. West*, 765 S.W.2d 812, 814 (Tex. App.—Houston [1st Dist.] 1988, no writ). 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.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). Additionally, we note 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 also Mem’l Hosp.*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 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 Mem’l Hosp.*, 927 S.W.2d at 10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

You inform us, and provide documentation showing, the Safety/Risk Management Committee (the “committee”) is a subcommittee of the hospital’s Medical Staff Committee. You explain the hospital is operated by the department. You inform us the committee “functions as an integral part of the [hospital’s] Medical Staff Committee that manages patient safety and security risks within the treatment environment.” You have submitted documents showing the committee is authorized to coordinate risk reduction activities and review and monitor environment risk at the hospital. Based on the department’s representations and our review, we agree the committee constitutes a medical committee for the purposes of section 161.032 of the Health and Safety Code.

You state the responsive information consists of records maintained by the committee for the purpose of making recommendations to the hospital’s Medical Staff Committee based on risks identified. The requestor argues the department maintains the records at issue in the regular course of business. In response, the department submitted comments to our office explaining the responsive information was created at the direction of and for the committee. You also state the committee is tasked with ensuring compliance with Joint Commission standards. Upon our review of the information and after careful consideration of the requestor’s comments, we determine the responsive information constitutes confidential

records of a medical committee under section 161.032 of the Health and Safety Code and was not created and is not maintained in the regular course of business. Accordingly, the department must withhold the responsive information pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/dls

Ref: ID# 495288

Enc. Submitted documents

c: Requestor
(w/o enclosures)