



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2013

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

OR2013-17256

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# 501273 (DSHS ORR No. 21733/2013).

The Texas Department of State Health Services (the "department") received a request for all inspections, surveys, reviews, unusual incident reports, and reports on the conditions of care at thirty-three named facilities from January 1, 2011, to the date of the request. 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.

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. This exception 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].

Health & Safety Code § 161.032(a), (c). In addition, section 161.032(g) provides, “[n]otwithstanding any other provision of this section, the records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition on the receipt of federal money.” Act of May 27, 2013, 83rd Leg., R.S., S.B. 59, § 66 (to be codified at Health & Safety Code § 161.032(g)). For purposes of this confidentiality provision, 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. *McCown*, 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).

In this instance, any release of information by the department in response to this request would not be as a requirement under federal law as a condition for receiving federal money. You inform us the submitted information consists of reports for state mental hospital facilities prepared by the Joint Commission (the “commission”) for the purpose of accreditation by the commission. In *Humana Hospital Corporation v. Spears-Petersen*, the court found that the commission is a medical committee under section 161.031(a)(2), and its accreditation report of a hospital is confidential under section 161.032. *See Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.—San Antonio 1993, orig. proceeding). Based on your representations and our review, we conclude that the submitted information constitutes records, information, or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code. We therefore conclude that this information is confidential under section 161.032(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 501273

Enc. Submitted documents

c: Requestor
(w/o enclosures)