



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2014

Mr. Brian G. Jackson
Counsel for the Sabine County Hospital
Jackson & Carter, PLLC
6514 McNeil Drive, Building 2, Suite 200
Austin, Texas 78729

OR2014-13477

Dear Mr. Jackson:

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# 531435.

The Sabine County Hospital (the "hospital"), which you represent, received a request for eight categories of information pertaining to a named physician at the hospital, as well as certain information pertaining only to the hospital. We understand the hospital does not possess some of the requested information.¹ 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 section encompasses information protected by other statutes, such as section 241.152 of the Health and Safety Code, which states, in relevant part:

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).

(a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." *Id.* § 241.151(2). You explain portions of the submitted information consist of complaints about the named physician's practice at the hospital containing information related to the history, diagnosis, treatment, or prognosis of the patient. Upon review, we find some of the submitted information consists of health care information that is confidential under section 241.152 of the Health and Safety Code. Accordingly, the hospital must withhold the submitted health care information you seek to withhold under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.²

Section 552.101 of the Government Code also 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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Id. § 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] hospital district[.]” *Id.* § 161.031(a). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [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., 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 that “documents generated by the committee in order to conduct open and thorough review” are confidential. *Mem’l Hosp.*, 927 S.W.2d at 10 (quoting *Jordan*, 701 S.W.2d at 647-48); *see also 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.* at 648; *see also* Open Records Decision No. 591 (1991) (construing, among other statutes, statutory predecessor to section 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 [or] hospital district[.]” 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 the governing board of the hospital, which is a medical peer review committee under section 161.032, compiled and created the attached documents “to evaluate [the named physician]’s competency and quality of patient care when deciding whether to grant and/or renew [the named physician]’s hospital privileges at [the hospital].” Based on your representations and our review, we conclude the hospital must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

In summary, the hospital must withhold the submitted health care information you seek to withhold under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code. The hospital must withhold the remaining information under 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 531435

Enc. Submitted documents

c: Requestor
(w/o enclosures)