



August 17, 2000

Mr. Corbin Wilson  
Assistant District Attorney  
Tarrant County  
Office of Criminal District Attorney  
Hospital District Office  
1025 South Jennings, Suite 300  
Fort Worth, Texas 76104

OR2000-3148

Dear Mr. Corbin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138138.

Tarrant County (the "county") received a request for information pertaining to the John Peter Smith Hospital pharmacy and prescription drugs written by its pharmacy. Specifically, the requestor seeks:

- 1) Total weekly or monthly statistics, whichever is more easily accessible, beginning June 1, 1998, detailing the percentage of all JPS Health Network prescriptions filled correctly the first time.
- 2) For the same time period and the same statistics, please provide the breakdown of correctly filled prescriptions for the outpatient pharmacies and for patients at John Peter Smith Hospital.
- 3) Total number of adverse drug reactions for calendar years 1997, 1998, 1999 and to date 2000. Please provide the breakdown of reactions from JPS patients treated in the hospital as well as on an outpatient basis.
- 4) Adverse drug reaction reports. We are not interested in identifying individual patients.
- 5) Total regular pay and overtime costs for outpatient pharmacy staff members for each month since the Dec. 6 opening of the central pharmacy on West Rosedale.

You claim that the requested “adverse reaction drug reports” are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the information at issue.<sup>1</sup>

As a preliminary matter, we note that while the requestor has asked for five different categories of information, you only seek an attorney general decision in regard to request-item four, the adverse drug reaction reports. Because the county has not submitted information responsive to the requestor’s other request-items, we have no basis for finding such information confidential. Thus, we have no choice but to order release of such information, to the extent it exists within the county’s possession, per section 552.302. If the county believes that such information is confidential and may not lawfully be released, the county must challenge this ruling in court as outlined below.

We now turn to the submitted information at issue. Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Thus, section 552.101 protects information that is made confidential by statute. Subchapter D of chapter 161 of the Health and Safety Code governs medical committees and medical peer review committees. Section 161.031 defines a “medical committee” as including “any committee, including a joint committee, of . . . a hospital” and further provides that “[t]he term includes 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.” Health & Safety Code § 161.031(a)(1), (b). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” Health & Safety Code § 161.0315(a). Section 161.032 provides in relevant part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. . . . Records, information, or reports of a medical committee . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital . . . are not subject to disclosure under Chapter 552, Government Code.

...

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital[.]

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of all of the information at issue. 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 those submitted to this office.

Health & Safety Code § 161.032(a), (c). You explain that the submitted adverse drug reaction reports are records of the medical committees of the county hospital district. You have also provided affidavits attesting to the fact that the reports are made at the direction of the Pharmacy and Therapeutics Committee and are ultimately used by the hospital district's board of managers' Quality Committee. Based on these representations and our review of the submitted documents, we conclude that they are 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 the submitted documents are confidential under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code. Accordingly, the county must withhold the submitted documents from public disclosure. *See also Barnes v. Whittington*, 751 S.W.2d 493, 495-96 (Tex. 1988) (construing predecessor statute); *Jordan v. Court of Appeals for the Fourth Judicial Dist.*, 701 S.W.2d 644, 646-48 (Tex. 1985) (same); *Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 34-36 (Tex. 1977) (same); Open Records Decision No. 591 at 2-3 (1991) (addressing scope of Health & Safety Code §§ 161.031, 161.032).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\er

Ref: ID# 138138

Encl: Submitted documents

cc: Ms. Charlotte Huff  
Star-Telegram  
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(w/o enclosures)