



January 23, 2001

Ms. Alice Bishop
Assistant District Attorney
Tarrant County
1025 South Jennings, Suite 300
Fort Worth, Texas 76104

OR2001-0250

Dear Ms. Bishop:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143462.

The Tarrant County Hospital District (the "district") received a request for reports generated by outside consultants that relate to hospital operations and patient treatment, statistics, salary information, and hospital policies as well as the amounts paid for the reports. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

You have also notified third parties whose proprietary or property interests might be implicated by the request pursuant to section 552.305(d) of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). You have submitted section 552.305 notices to Bishop & Associates, Ernst & Young, L.L.P, and North Texas Affiliated Medical Group. As of the date of this letter, we have only received a brief from Bishop & Associates regarding Exhibit K.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *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 that submitted to this office.

Initially, we note that section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Exhibit I falls under section 552.022(a)(1) of the Government Code. You argue that Exhibit I is excepted under sections 552.103, 552.107, and 552.111. Sections 552.103, 552.107, and 552.111 are discretionary exceptions under the Public Information Act and are not “other law” that make Exhibit I confidential under section 552.022. Accordingly, you must release Exhibit I.

Further, you state that payments made, if any, for the submitted reports are also privileged based on the confidentiality statutes raised for the reports. Pursuant to section 552.022(a)(3), information in an account, voucher, or contract relating to the expenditure of public funds is public. However, you have not submitted the payment information. *See Gov’t Code § 552.301(e)(1)(D)* (providing that you must submit a copy of the requested information). Further, we do not believe that the confidentiality of the report itself extends to the district’s payment for the report. *See Open Records Decision No. 465 at 4-5 (1987)* (providing that a statute must expressly require confidentiality). Therefore, if you have information in an account or voucher relating to the district’s payments for the submitted reports, you must release this information under section 552.022(a)(3).

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 [or] medical organization” 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)-(2), (b). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or]

medical organization . . . 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[.]

Health & Safety Code § 161.032(a), (c). You claim that Exhibits D, K, N, aa, cc, and ee are reports generated by outside consultants at the direction or for the use of various medical committees. You have provided affidavits from committee members attesting to the fact that the reports were prepared for the exclusive use of the specified committees for assessing and improving district services. With regard to Exhibits Q, R, U, W, Y, and gg, you claim that various accreditation agencies serve as “hospital review committees” whose reports should be excepted under section 161.032 of the Health and Safety Code. *See Humana Hosp. Corp. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.–San Antonio 1993, no pet.) (finding that Joint Commission on Accreditation of Healthcare Organizations is a medical committee under section 161.031(a)(2) and its accreditation report of a hospital is confidential under section 161.032). You have also provided affidavits of committee members who state that the submitted reports are records of a specified medical committee and used by medical committees for committee purposes. Based on these representations and our review of the submitted documents, we conclude that Exhibits D, K, N, Q, U, Y, aa, cc, ee, and gg 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 these exhibits 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 district 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).²

²Because you must withhold this information under section 552.101, we need not address your other asserted exceptions to disclosure or the arguments submitted by Bishop & Associates with regard to Exhibit K.

However, Exhibits R and W are documents created by the Texas Department of Health (“TDH”) and the Texas Department of Human Services (“TDHS”). We do not believe that TDH or TDHS, which are regulatory entities, meet the definition of a “medical committee” as stated in section 161.032 of the Health and Safety Code. Further, it does not appear that the information in Exhibits R and W were created at the impetus or direction of a medical committee. *See Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 493, 496 (Tex. 1988) (providing that records “gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected” under predecessor to section 161.032 of the Health and Safety Code). Therefore, we conclude that Exhibits R and W may not be withheld under section 161.032 of the Health and Safety Code.

You also claim that Exhibits R and T are excepted under section 552.101 in conjunction with section 241.051 of the Health and Safety Code. Section 241.051 of the Health and Safety Code applies to complaints filed on or after September 1, 1999 concerning a general hospital. It appears that the complaint in Exhibit R was filed prior to September 1, 1999. Therefore, section 241.051 does not apply to Exhibit R. Section 241.051 provides in pertinent part:

(d) All information and materials obtained or compiled by the *department* in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the department in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital’s authorized representative[.]

Health and Safety Code § 241.051(d)(1)-(2) (emphasis added). Section 241.051 applies to TDH but the district is an entity that is authorized to receive this information. This office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984).* Therefore, the information in Exhibit T must be withheld under section 552.101 in conjunction with section 241.051 if the complaint was filed on or after September 1, 1999. If the complaint was filed prior to September 1, 1999, then Exhibit T may not be withheld under section 552.101 in conjunction with section 241.051 of the Health and Safety Code.

Further, you assert that Exhibit F is excepted under section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney of a political subdivision cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). A “confidential communication” is a communication “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” Tex. R. Evid. 503(a)(5). When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. *Id.* at 3. In addition, purely factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You state that Exhibit F was solicited and prepared at the request and direction of the district’s attorneys and that the report contains confidential information relating to the district. After reviewing Exhibit F, we do not believe, nor have you demonstrated, that Exhibit F contains confidential communications. *See* Gov’t Code § 552.301(e)(2) (providing that governmental body must label copy of information to indicate which exceptions apply to which part). Accordingly, you may not withhold Exhibit F under section 552.107 of the Government Code.

You also assert that Exhibits F, R, T, and W are excepted under section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.) (emphasis added). However, an agency’s policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (records relating to problems with specific employee do not relate to making of new policy but merely implement existing policy); Open Records Decision No. 615 at 5-6 (1993). *But see* Open Records Decision No. 631 (1995) (finding personnel matters of a broader scope were excepted from disclosure under section 552.111).

With regard to Exhibit F, we find that the marked portion of the document consists of advice, recommendations, and opinions but the remainder of the information in Exhibit F contains purely factual information which you may not withhold under section 552.111. After reviewing Exhibits R, T, and W, we conclude that these exhibits pertain to internal administrative matters rather than policy issues and, therefore, are not protected under section 552.111. Accordingly, you may withhold the marked portion of Exhibit F but must release the remaining information in Exhibits F, R, T, and W.

In conclusion, you may withhold Exhibits D, K, N, Q, U, Y, aa, cc, ee, and gg under section 552.101 in conjunction with section 161.032 of the Health and Safety Code. Further, you must withhold Exhibit T under section 552.101 in conjunction with section 241.051 of the Health and Safety Code if the complaint was filed on or after September 1, 1999. You may also withhold the marked portion in Exhibit F under section 552.111 of the Government Code. You must release the remaining information.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 143462

Encl: Submitted documents

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