



January 30, 2001

Mr. J.O. Khayan Williams  
Assistant District Attorney  
Tarrant County  
Hospital District Office  
1025 South Jennings, Suite 300  
Fort Worth, Texas 76104

OR2001-0352

Dear Mr. Williams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143746.

The Tarrant County Hospital District (the "county") received a request for information related to an incident involving a possible leak of hazardous materials at the JPS Health Center-Diamond Hill and the Health Center for Women. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted information.

The information at issue involves completed reports. You state that you have submitted "an investigation report completed by the Hospital District's legal counsel (Exhibit "C"), a report of the incident by the Hospital District Safety Officer (Exhibit "D"), and report and recommendations to the Emergency Preparedness Committee . . . (Exhibit "E")." Section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). Our office has previously concluded that sections 552.103, 552.107, and 552.111 are discretionary exceptions. *See* Open Records

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<sup>1</sup>We note that the appropriate sections for a governmental body to cite when asserting the attorney-client and work product privileges are sections 552.107 and 552.111, respectively, rather than section 552.101. *See* Open Records Decision Nos. 647 (1996) (work product privilege), 574 (1990) (attorney-client privilege).

Decision Nos. 630 (1994) (section 552.107 is a discretionary exception), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation, and does not itself make information confidential), 470 (1987) (statutory predecessor to section 552.111 is a discretionary exception). We do not believe that these exceptions "expressly [make] information confidential under other law." Gov't Code § 552.022. After reviewing the submitted information, we conclude that you may not withhold the submitted information under section 552.103, 552.107, or 552.111 of the Government Code. You must release Exhibits C and D pursuant to section 552.022(a)(1).

However, Exhibit E is confidential by law, and is, therefore, not subject to release under section 552.022. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions. You contend that Exhibit E is confidential under section 161.032 of the Health and Safety Code. Section 161.032 of the Health and Safety Code makes confidential the "records and proceedings of a medical committee." Under section 161.031(a) of the Health and Safety Code, a "medical committee" includes any committee of a hospital, medical organization, university medical school or health science center, or extended care facility. It includes an ad hoc committee appointed to conduct a specific investigation as well as a committee established under the bylaws or rules of the organization. Health & Safety Code § 161.031(b). While the records and proceedings of a medical committee are confidential, *id.* § 161.032(a), the confidentiality does not extend to "records made or maintained in the regular course of business by a hospital." *Id.* § 161.032(c); Open Records Decision No. 591 (1991). Documents generated by a committee in order to conduct open and thorough review, as well as documents prepared by or at the direction of the committee for committee purposes, are confidential. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1, 9 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988); *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 648 (Tex. 1985).

You have submitted an affidavit which attests that Exhibit E was prepared by a member of the Emergency Preparedness Subcommittee of the Performance Improvement Committee at the John Peter Smith Hospital, which is owned and operated by the county hospital district. The affidavit further states that Exhibit E was prepared for the exclusive use of the medical committee for assessing and improving patient care and services. Based on your representations and our review of Exhibit E, we agree that Exhibit E is a record or proceeding of a medical committee made confidential by section 161.032 of the Health and Safety Code. See *Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977). Therefore, you must withhold Exhibit E under section 161.032.

In summary, you must withhold Exhibit E under section 161.302 of the Health and Safety Code. You must release Exhibits C and D under section 552.022(a)(1) of the Government Code.

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 of 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/er

Ref: ID# 143746

Encl: Submitted documents

cc: Mr. Mark Smith  
Producer, WFAA TV  
606 Young Street  
Dallas, Texas 75202  
(w/o enclosures)