



January 31, 2001

Mr. William A. Franklin
Boerner & Dennis
P.O. Box 1738
Lubbock, Texas 79408

OR2001-0371

Dear Mr. Franklin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143851.

The University Medical Center (the "medical center") received a written request for "all incident reports relating to" a named individual who was a patient at the medical center but is now deceased. You have submitted to this office as responsive to the request a single "Unusual Occurrence Report." You contend that this record is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code, as well as section 552.103 of the Government Code.

We note at the outset that the Unusual Occurrence Report you submitted to this office constitutes a "completed report" specifically made public under section 552.022(a)(1) except to the extent the report is made confidential by other law or comes under the protection of the "law-enforcement" exception, section 552.108 of the Government Code. Section 552.103 of the Government Code is not "other law" that makes information confidential for purposes of section 552.022(a)(1). *See* Open Records Decision No. 542 (1990) ("litigation exception" is waivable by governmental body). Consequently, the medical center may not withhold the report pursuant to section 552.103.

However, because your arguments for non-disclosure invoke provisions of law that make information confidential, we will consider your claims under section 552.101. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions regarding the records of medical peer review committees such as section 160.007 of the Occupations Code. Generally, "each proceeding or record of a medical peer review committee is confidential." Occupations Code

§ 160.007. A “medical peer review committee” is defined in subsection 151.002(a)(8) of the Occupations Code, which provides in relevant part

‘Medical peer review committee’ or ‘professional review body’ means a committee of a health care entity . . . that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians.

Section 161.032 of the Health and Safety Code also provides for confidentiality in regard to the records of a medical committee. “The records and proceedings of a medical committee are confidential and are not subject to court subpoena.” Health & Safety Code § 161.032. A “medical committee” includes “any committee . . . of . . . a hospital.” Health & Safety Code § 161.031(a)(1). However, neither section 160.007 of the Occupations Code nor section 161.032 of the Health and Safety Code makes confidential “records made or maintained in the regular course of business by a hospital . . . [or] hospital district.” Health & Safety Code § 161.032(c); *see Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1, 11 (Tex. 1996) (“The reference to [the statutory predecessor of section 160.007 of the Occupations Code] in section 161.032 is a clear signal that records should be accorded the same treatment under both statutes in determining if they were made ‘in the regular course of business.’”).

“Documents made or maintained in the regular course of business” have been construed to mean routine records the creation of which did not entail a “deliberative process.” *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d at 9 (citing *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988)). In *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 648 (Tex. 1985), the court stated that records “gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected.”¹ *See Memorial Hosp.-the Woodlands v. McCown*, 927 S.W.2d 1 at 9-10 (discussing business records and holdings in *Barnes* and *Jordan*). Therefore, even if records are submitted to or created by a medical peer review or medical committee, the records are not generally confidential if made or maintained in the regular course of business so as to be devoid of a deliberative process. *See* Health & Safety Code § 161.032(c).

In your “Memorandum Brief” submitted to this office, you explain that

Unusual Occurrence Reports are completed by hospital staff and sent to Risk Management at [the medical center]. Risk Management, also hospital staff,

¹*Barnes* and *Jordan* both relied upon the predecessor statute to 161.032 of the Health & Safety Code, section 3 of article 4447d, Vernon’s Texas Civil Statutes, which provided, in part, that “records made or maintained in the regular course of business” were not confidential.

summarizes the reports in a risk management report that is submitted to and reviewed by the Performance Improvement Committee.

Additionally, in an affidavit you submitted to this office, the director of the Performance Improvement Committee states that

Unusual Occurrence Reports are summarized by hospital staff and presented to the Performance Improvement Committee in the form of a Risk Management Report which is used and reviewed by the committee to carry out its responsibilities. The original occurrence reports are available [to] each committee member should they choose to review the individual reports.

Thus, by your own admission and that of the affidavit, it is standard procedure for Unusual Occurrence Reports to be summarized in a "Risk Management Report," which is then submitted to the Performance Improvement Committee. It appears that the Unusual Occurrence Report is created during the normal course of business. The Unusual Occurrence Report submitted to this office is a purely objective report containing the date, time, and location of the incident, a brief description of the injury incurred, and a description of the events leading up to the incident, and thus does not entail a "deliberative process." We therefore conclude that the Unusual Occurrence Report submitted to this office is not made confidential under either section 160.007 of the Occupations Code or section 161.032 of the Health and Safety Code. Because you have not established that this report is made confidential by law, we conclude that the medical center must release the report in its entirety.

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

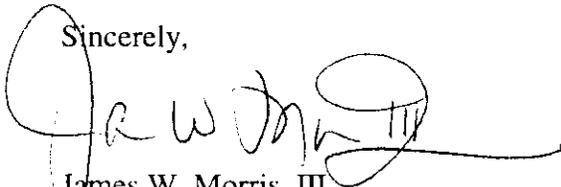
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/seg

Ref: ID# 143851

Encl. Submitted documents

cc: Mr. Reed Teckenbrock
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(w/o enclosures)