



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2007

Ms. Leah Curtis Morris
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P.O. Box 1256
Greenville, Texas 75403-1256

OR2007-14902

Dear Ms. Morris:

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# 294522.

The Hunt Memorial Hospital District (the "district"), which you represent, received three requests for copies of the minutes and any documents related to the emergency meeting held on August 29, 2007. One request also seeks information as to the make-up of the medical executive committee membership and the purpose for the committee under the district's charter/organizational regulations. You state that some of the responsive information will be released. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you note that release of the submitted information may implicate the privacy interests of a third party. Accordingly, you notified the third party of the requests and of the third party's right to submit arguments to this office explaining why this information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We received correspondence from an attorney for the third party. We have also considered comments submitted on behalf of one of the requestors. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered all submitted arguments and reviewed the submitted information.

Initially, you assert that two of the requests seek board minutes that were not in existence at the time the requests were made.¹ The Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision Nos. 605 at 2 (1992), 572 at 1 (1990), 558 at 1 (1990), 362 at 2 (1983). Thus, the district is under no obligation to obtain or prepare new information in response to these requests. *See* Gov't Code §§ 552.002, 552.021, 552.227, 552.351; Open Records Decision No. 572 (1990). Furthermore, we have marked information that the district has submitted that is not responsive to the request.

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. Section 552.101 encompasses information protected by other statutes, such as section 551.104(c) of the Government Code, which provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). The district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code). Such information cannot be released to a member of the public in response to an open records request. *See* ORD 495 (1988). In addition, minutes of a closed meeting are confidential. *See* Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session are confidential under OMA); ORD 495 (1988) (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). Accordingly, the district must withhold any responsive certified agendas or session minutes of closed meetings of the district's board under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

The district argues that the remaining submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code. Medical peer review is defined by the Medical Practice Act (the "MPA"), found at subtitle B of title 3 of the Occupations Code, to mean "the evaluation of medical and health care services, including evaluation of the qualifications of professional health care practitioners and of patient care rendered by those practitioners." Occ. Code § 151.002(a)(7). Medical peer review includes evaluation of the "merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint." *Id.* § 151.002(a)(7)(A). A medical peer review committee is "a committee of

¹However, the district states that it will release the minutes of the portion of the August 29, 2007 meeting that was open to the public and prepared and approved by the Board of Directors in response to the third request because the minutes were in existence at the time of that request.

a health care entity . . . or the medical staff 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[.]” *Id.* § 151.002(a)(8). Section 160.007 of the MPA states that, “[e]xcept as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.” *Id.* § 160.007.

Section 161.032 of the Health and Safety Code provides in 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 . . . 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.

...

(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.

Health & Safety Code §§ 161.032(a), (c), (f). Section 161.031(a) defines a “medical committee” as “any committee . . . of (1) a hospital. . . .” *Id.* § 161.031(a)(1). Section 161.031(b) provides that the “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.” *Id.* § 161.031(b). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [or] medical organization . . . may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by Section 161.031, to evaluate medical and health care services . . .” *Id.* § 161.0315(a).

The district states that the remaining submitted information consists of records of a medical peer review committee. Based on the district’s representation and our review of the information at issue, we agree that this information consists of records of a medical peer review committee, or medical committee, and, thus, is confidential under section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. Accordingly,

the remaining submitted information must be withheld under section 552.101 of the Government Code.

In summary, the district must withhold any responsive certified agenda or minutes of closed meetings of the district's board under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The district must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 160.007 of the Occupations Code and section 161.032 of the Health and Safety 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

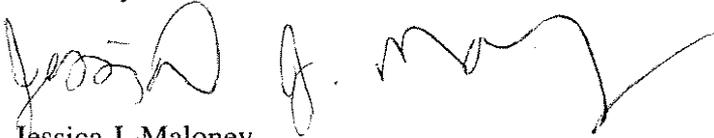
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 294522

Enc. Submitted documents

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