



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2009

Mr. David C. Petruska
Petruska & Associates
5600 West Lovers Lane, Suite 116-361
Dallas, Texas 75209

OR2009-06815

Dear Mr. Petruska:

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# 343477.

Reeves County (the "county"), which you represent, received a request for (1) mortality reviews submitted by Physician's Network Association, P.A., ("PNA") to the county in the past year, and (2) quality assurance/quality improvement ("QA/QI") reports collected and organized by PNA in the past year. You assert that the information responsive to item (2) is not subject to the Act. You claim that the information responsive to item (1) is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also explain that release of the information at issue could implicate the rights of a third party. Accordingly, you have notified PNA of this request for information and its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments and reviewed the submitted representative sample of the information at issue.¹ We have also considered comments submitted by PNA and the

¹We 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.

requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that QA/QI reports collected and organized by PNA are not subject to the Act. The Act is applicable to "public information," *see id.* § 552.021, which is defined by section 552.002 of the Act as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information in a governmental body's physical possession constitutes public information subject to the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. *See* Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987). A governmental body must make a good-faith effort to relate a request for information to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). However, a governmental body is not required to take affirmative steps to create or obtain information that is not in its possession, unless another individual or entity holds that information on behalf of the governmental body that received the request for it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989).

PNA and the county are parties to a contract known as the Medical Services Agreement (the "agreement"). The requestor submitted to this office a copy of the agreement, which we have reviewed. Section IV(F)(7) of the agreement stipulates that PNA will collect and organize QA/QI data and share such information with the county "to the extent permitted by law." Nevertheless, the county argues that the requested QA/QI reports "are not public information because they are not collected, assembled, or maintained by PNA *for* the [c]ounty, regardless of whether PNA agrees to share that information with the [c]ounty." (Emphasis in original.) PNA similarly argues that the QA/QI reports at issue do not constitute public information "because PNA is a private independent contractor that prepares and maintains its internal QA/QI data and maintains control over its own methods and details of work" and the

requested QA/QI reports “are not collected, assembled, or maintained by PNA for the county.”²

After review of the submitted arguments and information, we find dispositive the fact that the agreement requires PNA to collect, assemble, and/or maintain QA/QI reports and grants the county a right of access to these reports “to the extent permitted by law.” Neither the county nor PNA have shown any law that prohibits PNA from sharing the reports at issue with the county. As the county has a contractual right of access to the QA/QI reports, we conclude that such reports are collected, assembled, and/or maintained for the county and thus constitute public information under section 552.002. *See* Gov’t Code § 552.002(a)(2); *see also* *Baytown Sun v. City of Mont Belvieu*, 145 S.W.3d 268, 271 (Tex.App.—Houston [14th Dist.] 2004, no pet.) (governmental body that was entitled to inspect books and records of contracting party had right of access to its payroll account records).

We next consider the exceptions to disclosure raised by the county and PNA. 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. This exception encompasses information made confidential by other statutes, including section 161.032 of the Health and Safety Code. Section 161.032(a) makes confidential the “records and proceedings of a medical committee.” Health & Safety Code § 161.032(a). A “medical committee” is defined as any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, or extended care facility. *See id.* § 161.031(a). The term also encompasses “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).

The precise scope of section 161.032 has been the subject of a number of judicial decisions. *See, e.g., Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. However, this protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.* at 648; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to section 161.032).

The county and PNA inform this office that all of the information at issue was prepared by the Root Cause Analysis/QI Review Committee (the “committee”), which is authorized by

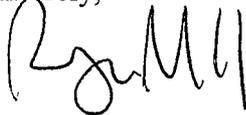
²We note that this office has previously ruled that whether a party to a contract with a governmental body is an independent contractor and/or an agent is not dispositive of whether information held by the party is subject to the Act. *See* ORD 462 at 4-5.

PNA "to evaluate the quality of medical and health care services, including a review of inmate deaths occurring at the [Reeves County Detention Center]." The county states that the root cause analyses reports were "made specifically for a medical committee's use," reflect "the deliberative process and recommendations of the Committee," and were "prepared by or at the direction of the Committee." PNA states that the QA/QI reports at issue were also prepared by the committee and concern "PNA's provision of medical and health care services at [the Reeves County Detention Center]." Furthermore, PNA represents that these reports were "prepared by or at the direction of the Committee to assist the Committee in making recommendations for improvement." Based on these representations and our review of the submitted information, we agree that the information at issue consists of records and proceedings of a medical committee. Accordingly, we conclude that the county must withhold this information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health & Safety Code. As this ruling is dispositive, we need not address the remaining arguments against disclosure.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/cc

Ref: ID# 343477

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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