



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2010

Ms. Nneka C. Egbuniwe  
Deputy General Counsel  
Parkland Health and Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

OR2010-17094

Dear Ms. Egbuniwe:

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# 401289.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for records relating to evaluations of five named current or former residents. You state Parkland does not have some of the requested information.<sup>1</sup> You state Parkland intends to provide some of the requested information to the requestor, but claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state the submitted documents may contain proprietary information of a third party subject to exception under the Act. Accordingly, you inform us the district intends to notify University HealthSystem Consortium of the district's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

You inform us the submitted information consists of completed Patient Safety Net ("PSN") reports. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you assert this information is excepted under section 552.111 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 663 at 5 (1999) (governmental body may waive section 552.111). Accordingly, the district may not withhold the submitted information under section 552.111. However, section 552.101 of the Government Code constitutes other law for purposes of section 552.022; therefore, we will consider whether this section requires you to withhold any of the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes, including section 161.032 of the Health and Safety Code, which provides in part the following:

(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, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(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

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<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). For purposes of this confidentiality provision, a “medical committee” includes any committee, including a joint committee, of . . . a hospital[,] a medical organization[, or] hospital district[.]” *Id.* § 161.031(a)(1), (2), (6). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital, medical organization [or] hospital district . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” *Id.* § 161.0315(a).

The precise scope of the “medical committee” provision 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. 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).

You inform us the district’s board of managers (the “board”) is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling, and administering the district. You state one of the board’s responsibilities is “[t]o establish, support, and oversee a system-wide performance improvement program.” You inform us that, in furtherance of this duty, the board entrusts medical staff to establish and support committees and procedures to improve performance throughout the district. You state the submitted information pertains to the results of reviews conducted by the board’s Quality and Risk Management Committee. You explain the bylaws of the Quality and Risk Management Committee require it to provide to the board “quarterly reports on performance improvement and quality and risk management activities” and that “these reports will address such issues as clinical safety, compliance, regulatory and accreditation activities.” Based on this representation, we agree the board’s the Quality and Risk Management Committee is a medical committee as defined by section 161.031.

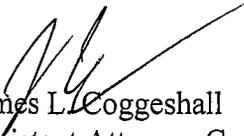
You inform us the submitted information consists of PSN reports and documentation of review and analysis activities conducted within the district’s quality assurance and risk management review process. You state the PSN reports are generated by nurses and other health care providers “whenever an untoward occurrence is observed by or reported to [district] staff.” You explain the Quality and Risk Management Committee of the board reviews the PSN reports and staff recommendations in order to prevent adverse events from recurring. Additionally, you state the requested PSN reports and documentation are not prepared in the regular course of business and are part of a “deliberative process of

identifying incidents involving patient care, evaluating their causes and severity, and making recommendations on how to remedy the situation and reduce the likelihood of recurrence.” Cf. *Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on your representations and our review, we find the district has established the submitted information consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code. Therefore, the district must withhold submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>3</sup>

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](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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tp

Ref: ID# 401289

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.