



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2011

Mr. Geoffrey Barr  
Denton, Navarro, Rocha & Bernal, PC  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2011-04616

Dear Mr. Barr:

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# 413441.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for all e-mails and other records showing when and how a named member of the district's Board of Managers became aware of a specified inspection of the district. You state some information will be released to the requestor upon his response to a cost estimate. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section encompasses information protected by other statutes. Section 160.007 of the Occupations Code provides, in relevant part:

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<sup>1</sup>Although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure, but is a provision in the Act that lists categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

(a) Except 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.

Occ. Code § 160.007(a). A medical peer review committee is “the governing board 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). However, the governing body of a hospital district acts as a medical peer review committee only

(i) in relation to the governing body’s evaluation of the competence of a physician or the quality of medical and health care services provided by the public hospital, hospital authority, or hospital district; and

(ii) to the extent that the evaluation under Subparagraph (i) involves discussions or records that specifically or necessarily identify an individual patient or physician.

*Id.* § 151.002(a)(8)(B); *see also* Attorney General Opinion JC-0108 (1999) (actions of governing body of hospital district may qualify for medical peer review privilege, but only to extent specific patient or physician is identified). Section 161.032 of the Health and Safety Code addresses the broader category of medical committees, and provides in relevant 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, 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 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 [or] a hospital district [.]” *Id.* § 161.031(a). Section 161.0315 provides “[t]he governing body of a hospital, medical organization, university medical school or health science center [or] hospital district . . . 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).

You argue the submitted information constitutes the privileged records of a medical peer review committee or medical committee under section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. You inform us the district’s Board of Managers (the “board”) is the governing body of the district. You state the named person at issue is a member of the board and was acting in her official capacity with respect to the submitted information. You inform us the board “is responsible for the overall evaluation and quality of medical and health care” at the district, and as such “has established various medical committees and defin[ed] their respective duties and obligations.” You further explain the board creates these committees to assist it with the obligation to oversee the medical and health care services of the district. However, you have not explained how the information at issue and the information on its face does not “specifically or necessarily” identify an individual patient or physician,” as required for the board to qualify as a medical peer review committee under section 151.002(a)(8)(B) of the Occupations Code. Further, although section 161.0315(a) of the Health and Safety Code authorizes the board to form medical committees, and you state the board has done so, you have not explained how the board itself is a medical committee. The committee organizational chart you submitted as support further establishes that while the board oversees a network of medical committees, it is not itself such a committee.

You next argue federal law requires the board to establish a patient grievance process for the district. Section 482.13(a)(2) of title 42 of the Code of Federal Regulations provides in relevant part:

The hospital must establish a process for prompt resolution of patient grievances and must inform each patient whom to contact to file a grievance. The hospital’s governing body must approve and be responsible for the effective operation of the grievance process and must review and resolve grievances, unless it delegates the responsibility in writing to a grievance committee. The grievance process must include a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate Utilization and Quality Control Quality Improvement Organization. . . .

42 C.F.R. § 482.13(a)(2). The district appears to contend this federal mandate somehow qualifies the board as a medical committee or medical peer review committee with protection

under section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. However, the district does not explain the nexus between the district's responsibility to establish a patient grievance process and the confidentiality afforded under section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. Therefore, none of the submitted information may be withheld on that basis.

While you claim the document presented to the board is confidential under section 161.0315(e), this section applies only to information given to the board regarding review of a facility that has contracted with the district to provide medical and health care services. Health & Safety Code § 161.0315(e) (report hospital district governing body receives regarding evaluation of health care services provided by facility under contract with district is confidential). The submitted information reflects, and you have not stated otherwise, that it concerns the district itself, not a contracted facility. Thus, this section does not apply to the document presented to the board. Finally, with the exception of page six of the submitted PDF documents, we find you have not explained how the information at issue constitutes records, information, or reports of a medical committee or medical peer review committee under section 160.007 of the Occupations Code or 161.032(c) of the Health and Safety Code. Therefore, page six of the submitted information is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code. The remaining information is not confidential under section 161.032(a), section 161.032(e), or section 161.0315(e) of the Health and Safety Code, or section 160.007 of the Occupations Code, and may not be withheld under those sections.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking

functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You state the remaining information consists of advice, recommendations, and opinions reflecting the policymaking processes of the board. We find the information we have marked may be withheld under section 552.111. However, the remaining information is purely factual or administrative, and you have not demonstrated this information consists of advice, opinion, or recommendations relating to the policymaking processes of the board. Thus, the district may not withhold the remaining information under section 552.111.

We note the remaining information consists of e-mail addresses subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Upon review, we find the e-mail addresses we have marked are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under section 552.137, unless their owners have affirmatively consented to disclosure.<sup>3</sup>

In summary, the district must withhold page six of the submitted information under section 552.101 of the Government Code in conjunction with section 161.032(a) of the Health and Safety Code. The district may withhold the information we have marked under section 552.111 and must withhold the e-mail addresses we have marked under section 552.137, unless their owners have affirmatively consented to disclosure. The remaining information must be released to the requestor.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 413441

Enc. Submitted documents

c: Requestor  
(w/o enclosures)