



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Ms. Jameene Y. Banks
Counsel for the Dallas County Hospital District
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2011-09158

Dear Mr. Henry:

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# 423704.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for "the Parkland Police Department response and investigation into the alleged abuse of the psychiatric patient by staff members in March[,]," including any incident, arrest, or narrative report, and other law enforcement records. You claim the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 160.007 of the Occupations Code provides, in relevant part:

(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.

(c) A record or proceeding of a medical peer review committee or a written or oral communication made to the committee may be disclosed to:

...

(4) the board; or

(5) the state board of registration or licensing of physicians of another state.

Occ. Code § 160.007(a), (c)(4), (c)(5). For purposes of section 160.007, “medical peer review” is defined by the Medical Practice Act, subtitle B of title 3 of the Occupations Code (the “MPA”), to mean “the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners.” *Id.* § 151.002(a)(7). A medical peer review committee is “a committee of 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). Further, section 161.032 of the Health and Safety Code 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 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 section 161.032, a “medical committee” includes any committee, including a joint committee, of a hospital, 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); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977). 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 in furtherance of this duty, the board maintains overall responsibility for the implementation and maintenance of the Performance Improvement Plan (the “PIP”). Further you state that, under the PIP, the board provides authority to medical staff to establish and support medical committees to carry out quality and performance improvement activities system-wide. You state the Patient Safety and Risk Department (the “PSRD”) was organized under this structure and carries out the functions of this part of the board’s duties. Upon review, we agree the PSRD is a medical peer review committee for purposes of section 151.002(a)(7) of the Occupations Code and a medical committee for the purposes of section 161.032 of the Health and Safety Code.

You assert pages 1-176 of the submitted documents are confidential under section 161.032. You state the documents at issue are the PSRD’s “records documenting and reflecting the internal investigation that took place regarding this matter” and the information “was internally prepared in the course of the [PSRD]’s investigation and fact-gathering function in furtherance of its overall duties as well as those of the broader quality assurance system and [the board].” You also state “these reports and notations are not prepared in the regular course of business, but reflect the 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.” However, you also inform us pages 34-48 and 157-176 consist of law enforcement records held by the district’s police department. Because these pages consist of law enforcement records in the possession of a law enforcement agency, we find you have failed to establish this information consists of records of a medical committee. Therefore, we conclude you have not established pages 34-48 and 157-176 are confidential under section 161.007 or 161.032 and the district may not withhold this information under section 552.101 on those grounds. However, based on your representations and our review of the submitted information, we agree the remaining information at issue consists of confidential records of a medical committee under section 161.032. Therefore, we conclude pages 1-33 and 49-156 are confidential under

section 161.032 and the district must withhold this information under section 552.101 of the Government Code.¹

You indicate pages 34-48 and 157-177 are confidential under the MPA, which is also encompassed by section 552.101 of the Government Code. Section 159.002 of the MPA provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, 159.005. Upon review, we find you have not established the law enforcement records at issue constitute medical records for purposes of the MPA. Therefore, the district may not withhold pages 34-48 and 157-177 under section 552.101 on that ground.

You also assert pages 34-48 and 157-177 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the information at issue pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), including the identification and description of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

Thus, with the exception of the basic front-page offense and arrest information, the district may withhold pages 34-48 and 157-177 under section 552.108(a)(2).

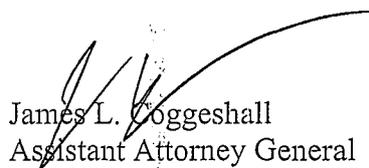
The basic information contains information that is protected under common-law privacy. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Because the requestor knows the nature of the incident at issue, in this situation we determine the complainant's identifying information is intimate and embarrassing and not of legitimate public interest; therefore, the district must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

To conclude, the district must withhold pages 1-33 and 49-156 under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. With the exception of basic information, the district may withhold pages 34-48 and 157-177 under section 552.108(a)(2) of the Government Code; however, in releasing basic information, the district must withhold the complainant's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 423704

Enc. Submitted documents

c: Requestor
(w/o enclosures)