



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2014

Ms. Melanie J. Rodney
Assistant County Attorney
Harris County Hospital District
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2014-08854

Dear Ms. Rodney:

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# 523479 (CAO File No. 14HSP0200).

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for productivity reports for a specified period of time and pay stub information pertaining to the requestor. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code, which 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] hospital district[.]” *Id.* § 161.031(a). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital [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., Mem’l 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. *Mem’l Hosp.*, 927 S.W.2d at 10 (quoting *Jordan*, 701 S.W.2d at 647-48); *see also Doctor’s Hosp. v. West*, 765 S.W.2d 812, 814 (Tex. App.—Houston [1st Dist.] 1988, no writ). 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, among other statutes, statutory predecessor to section 161.032). Additionally, we note section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital [or] hospital district[.]” Health & Safety Code § 161.032(f); *see also Mem’l Hosp.*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 is clear signal records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business). The phrase “records made or maintained in the regular course of business” has been construed to mean records that are neither created nor obtained in connection with a medical committee’s deliberative proceedings. *See Mem’l Hosp.*, 927 S.W.2d at 10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

You state the information at issue consists of an Adverse Drug Events (“ADE”) report comprised of data taken from the system’s Electronic Incident Reporting System (“EIRS”). You explain ADE reports, in various configurations, are used by the Pharmacy and Therapeutics Committee (“P&T Committee”) and the Medical Use Safety Committee (“MUSC”), a subcommittee of the P&T Committee. You state the P&T Committee is a medical committee that “periodically review[s] drug reaction reports [and] participate[s] in quality assurance activities related to distribution, administration, and use of medication.” You further state the P&T Committee relies, in part, on comprehensive ADE reports submitted to it by the MUSC. You state the MUSC analyzes specialized ADE reports and incorporates this data into more comprehensive reports analyzed at the P&T Committee meetings. Based on your representations and our review, we agree the P&T Committee and the MUSC constitute medical committees as defined by section 161.031 of the Health and Safety Code.

In this instance, you explain the submitted ADE report consists of data compiled from EIRS over a specified period of time, restricted to a particular employee and location. You acknowledge this particular ADE report may not have been presented to either the P&T Committee or the MUSC. However, you state the data contained in EIRS consists of incident reports entered into the system by supervisors and employees for the purpose of “using the generated data, *in part*, for evaluation and analysis by both the P&T Committee and the MUSC.” (emphasis added). However, you do not inform us that the actual data contained in the submitted ADE report is the part of the generated data that was specifically made for a medical committee’s use. *See Martinez v. Abbott Laboratories*, 146 S.W. 3d. 260 (Tex. App. – Fort Worth 2004, pet. denied) (incident report is not considered to be made or maintained in the regular course of business if the incident report was “made specifically for a medical committee’s use.”) Based upon your arguments and our review, we find you have failed to demonstrate the submitted ADE report was compiled specifically for use by a medical committee. Furthermore, you failed to demonstrate the submitted information at issue consists of records, information, or reports of a medical committee or information provided by a medical committee. *See Jordan*, 701 S.W.2d at 648 (providing that records “gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected” under predecessor to section 161.032 of the Health and Safety Code). Thus, we find none of the submitted information is confidential under section 161.032 of the Health and Safety Code and the system may not withhold it under section 552.101 of the Government Code on this basis. The system must release the submitted ADE report.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 523479

Enc. Submitted documents

cc: Requestor
(w/o enclosures)