



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2014

Ms. Thao La  
Senior Attorney  
Legal Affairs  
Parkland Health & Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

OR2014-09426

Dear Ms. La:

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# 524881 (DCHD# 14-30).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for any investigative reports pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report subject to subsection 552.022(a)(1), which must be released unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold this information under sections 552.103 and 552.111 of the Government Code. However, sections 552.103 and 552.111 are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, this information may not be withheld under section 552.103 or section 552.111 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertion of the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure. In addition, because section 552.101 can make information confidential under the Act, we will consider your argument under this exception.

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 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. Further you state that, under the Performance Improvement Plan, the board provides authority to medical staff to establish and support medical committees to carry out quality and performance improvement activities system-wide. You explain the district’s Patient Safety and Risk Department, and the Quality Safety Department are organized under this structure to carry out the duties of the district’s board.

You state Exhibit C consists of information used by the Patient Safety and Risk, Performance Improvement, and/or Quality Safety committees in order to implement the steps necessary to improve the quality of care in district facilities. You state this information was prepared and collected in a sequence of activity wholly within the purview of duly established medical

committees. You also state this information was “not prepared in the regular course of business, but reflect[s] 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.” Based on your representations and our review, we conclude the district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>1</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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 524881

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.