



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2015

Mr. Timothy E. Bray
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2015-07506

Dear Mr. Bray:

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# 560452 (DSHS File No. 24005/2015).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified incident involving the requestor's son, including a video recording of the incident and information pertaining to the medical care of his son. You state some information has been or will be provided 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. Section 552.101 encompasses information made confidential by other statutes, such as section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. 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.

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). 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). A “medical committee” is any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See id.* § 161.031(a). The term also encompasses “a committee appointed *ad hoc* to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031(b) (emphasis added).

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 “documents generated by

the committee in order to conduct open and thorough review” are confidential. *Mem'l Hosp.*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *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.*; see also Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 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[.]” 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 Rusk State Hospital Root Cause Analysis Peer Review for Sentinel Events Oversight Group (the “oversight group”) was “formed for the purpose of conducting a Root Cause Analysis, as required by The Joint Commission accreditation standards, of the underlying incident[.]” We understand Rusk State Hospital (the “hospital”) is operated by the department. Based on the department’s representations and our review, we agree the oversight group constitutes a medical committee for the purposes of section 161.032 of the Health and Safety Code.

You indicate the submitted information consists of information prepared by the oversight group. In *Humana Hospital Corporation v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.—San Antonio 1993, orig. proceeding), the court found the Joint Commission is a medical committee under section 161.031(a)(2) and its accreditation report of a hospital is confidential under section 161.032.¹ *Id.* Based on your representations and our review, we find some of the submitted information, which we have marked, constitutes confidential records of a medical committee under section 161.032 of the Health and Safety Code and was not created and is not maintained in the regular course of business. Accordingly, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. However, we find you have failed to demonstrate any of the remaining information consists of records, information, or reports of or provided by a medical committee, medical peer review committee, or compliance officer for purposes of section 161.032 of the Health and

¹We understand the Joint Commission was formerly known as the Joint Commission on Accreditation of Healthcare Organizations.

Safety Code. *See id.* § 161.031. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 576.005 of the Health and Safety Code, which provides, “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” Health & Safety Code § 576.005. We understand the hospital is a mental health facility as defined by chapter 571. *See id.* § 571.003(12). You assert the remaining information consists of records of a mental health facility that directly or indirectly identify a patient. Based on your representation and our review, we agree the confidentiality provision applies to the information we have marked and indicated, and the department must withhold this information under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.² However, we find you have failed to demonstrate how any of the remaining information at issue identifies a patient of a mental health facility under section 576.005. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. The department must release the remaining information.

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

²You have informed our office section 611.004 of the Health and Safety Code is considered other state law for purposes of section 576.005 of the Health and Safety Code. We note this ruling does not affect the right of access of a person who has the written consent of a patient to access his or her mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Health & Safety Code §§ 611.004, .0045; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Act).

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 black ink, appearing to read 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 560452

Enc. Submitted documents

c: Requestor
(w/o enclosures)