



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2016

Mr. Trent B. Krienke
Counsel for Glen Rose Medical Center
Reed, Claymon, Meeker & Hargett, P.L.L.C.
5608 Parkcrest Drive, Suite 200
Austin, Texas 78731

OR2016-16141

Dear Mr. Krienke:

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# 619004.

The Somervell County Hospital District d/b/a Glen Rose Medical Center (the "district"), which you represent, received a request for complaints and grievances lodged against the district and/or a named individual, reviewed by the Quality Committee, for a specified time period.¹ 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 representative sample of information.² 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).

¹The requestor asserts, and the district acknowledges, the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the district's claim under section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the district's claim. *See id.* §§ 552.007, .302.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note the district has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information without requesting a decision under the Act. *See id.* § 552.301(a), (e)(1)(D). However, you do not assert, nor does our review of our records indicate, the district is authorized to withhold the redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Therefore, this type of information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See Gov't Code* § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 161.032 of the Health and Safety Code. Section 161.032 of the Health and Safety Code addresses the broad 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 medical organization [or] a university medical school or health science center [or] a hospital district [.]” *Id.* § 161.031(a). Section 161.0315 provides in relevant part that “[t]he governing body of a hospital, medical organization, university medical school or health science center [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); *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. 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).

Further, section 161.032 does not make confidential “records made or maintained in the regular course of business by a . . . university medical center or health science center[.]” Health & Safety Code § 161.032(f); *see also McCown*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 of the Health and Safety Code 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 McCown*, 927 S.W.2d at 9-10.

The district’s Board of Directors (the “board”) has the responsibility of managing, controlling, and administering the district. You inform us one the board’s responsibilities is to establish, support, and oversee a system-wide performance improvement program. You also inform us that, in furtherance of this responsibility, the board maintains overall responsibility for the implementation and maintenance of a quality committees. You state the board provides authority to the quality committees to carry out quality and performance improvement activities system-wide. We understand the board organized the Quality Committee under this structure and this committee carries out the functions of this part of the board’s responsibilities. You state the Quality Committee maintains, evaluates, and processes complaints and grievances filed at the district according to the applicable policies and procedures in order to further the board’s patient care goals and requirements. Based on your representations and our review, we agree the Quality Committee is a medical committee for the purposes of section 161.032.

You inform us the submitted information was collected, assembled, created, and maintained by the Quality Committee in the course of the district’s quality assurance program. You

explain the information at issue is kept separate from other hospital records and patient charts, and is used only for Quality Committee purposes. Based on this representations and our review, we agree the submitted information consists of the confidential records of a medical committee under section 161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.³

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 619004

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.