



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2016

Mr. Nolan Greak
Counsel for the County of Lamb
Greak Law, P.C.
8008 Slide Road, Suite 30
Lubbock, Texas 79424-2828

OR2016-02716

Dear Mr. Greak:

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# 596713.

Lamb County, Texas d/b/a Lamb Healthcare Center General Acute Hospital and Lamb County Hospital d/b/a LHC Family Medicine (the "hospital"), which you represent, received a request for four categories of information pertaining to the employment of a named individual, including (1) his current employment status, (2) dates of employment, (3) employment leave during a specified time period, and (4) correspondence between hospital administrators and the named individual regarding his employment status. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to each of the requested categories of information. To the extent any additional information responsive to the request existed on the date the hospital received the request, we assume the hospital has released it. If the hospital has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 161.032 of the Health and Safety Code. Section 161.032 addresses a broad category of medical committees and provides, in relevant 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). 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

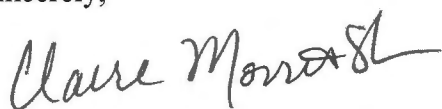
(stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 is clear signal records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business). The phrase “records made or maintained in the regular 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 hospital’s medical peer review committee conducted peer review with regard to the named individual. You further state such peer review is continuing through an appellate process to the Lamb County Board of Managers, which you inform us is the governing board of the hospital. You state the submitted information consists of records relating to and involved in the peer review of the named individual. Based on your representations and our review, we agree the information at issue consists of confidential records of a medical peer review committee under section 161.032. Cf. *Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Therefore, we conclude the hospital must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.¹

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 596713

Enc. Submitted documents

c: Requestor
(w/o enclosures)