



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2020

Mr. Robert Spurck
Counsel for Gainesville County Hospital District
Reed, Claymon, Meeker & Hargett, PLLC
5608 Parkcrest Drive, Suite 200
Austin, Texas 78731-4999

OR2020-29402

Dear Mr. Spurck:

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# 854441.

The Gainesville Hospital District (the "district"), which you represent, received a request for (1) a list of employees who worked in the cash office during a specified period of time; (2) records related to a specified settlement; (3) e-mail communications between two named individuals during a specified period of time; (4) records related to a bankruptcy filed on a specified date; (5) specified audits; and (6) any records pertaining to an audit with a specified finding. You state the district will release information responsive to categories one, two, and five. You also state the district does not have information responsive to category three.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 information.

You inform us the district sought clarification from the requestor of category four of the request for information. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*,

¹ The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over broad request, ten day period to request attorney general ruling is measured from date request is clarified). You state the district has not received a response to the request for clarification. Thus, we find the district is not required to release information in response to the portion of the request for which the district has sought but not received clarification. However, if the requestor clarifies or narrows the portion of the request for information for which the district sought clarification, the district must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

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 section 161.032 of the Health and Safety Code, which provides, in relevant part:

(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].

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital, [or] hospital district[.]

Health & Safety Code § 161.032(c), (e), (f). You state the submitted information consists of an investigation report received by the district's compliance officer that is maintained in the district's compliance office file. You state the investigation report was created at the direction of the compliance officer and is derived from an investigation of employees conducted by a third party with the assistance of the district's compliance officer. You inform us the information at issue is not maintained in the regular course of business of the district but is kept with compliance records separate from other district records. Moreover, you state this information was received and maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services. *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). Based on the district's representations and our review, we conclude the submitted information consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Therefore, the district 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

Ref: ID# 854441

c: Requestor