



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Ms. Carolyn Foster
Associate General Counsel
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2009-06084

Dear Ms. Foster:

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# 341950.

The Parkland Health & Hospital System ("Parkland") received a request for information pertaining to a specified Parkland employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the requestor in this instance only seeks the full name and date of birth of the individual at issue. However, Parkland has submitted entire portions of the specified individual's personnel file for our review. Thus, any information beyond the requested name or date of birth of the individual at issue is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and Parkland is not required to release this information, which we have marked, in

¹We 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.

response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed). As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Parkland claims that the submitted information is excepted from disclosure under section 552.101 of the Government Code, which 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 protected by other statutes. Section 48.101(a) of the Business and Commerce Code, provides that

[a] person may not obtain, possess, transfer, or use personal identifying information of another person without the other person’s consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name.

Bus. & Comm. Code § 48.101(a). “Personal identifying information” is defined as “information that alone or in conjunction with other information identifies an individual” and includes an individual’s name. *Id.* § 48.002(1)(A). You assert that the requested information meets the definition of “personal identifying information” under section 48.002(1). *See id.* You indicate that because section 552.222 of the Act prohibits a governmental body that receives a request for information from inquiring into the purpose for which the information will be used, Parkland cannot comply with the requirements of section 48.101(a). *See id.* § 48.002(1)(A); Gov’t Code § 552.222(a), (b). We note that section 552.204 of the Government Code provides that a governmental body is not responsible for a requestor’s use of information released pursuant to the Act. *See id.* § 552.204(a). Further, section 48.101(a) does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See* Bus. & Comm. Code § 48.101(a). In this instance, Parkland’s release of the information at issue would be for the purpose of complying with the Act, and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the [employee]’s name.” *See id.* § 48.101(a). Therefore, section 48.101(a) does not prohibit Parkland from transferring the requested information. *See id.* Thus, we conclude that Parkland may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 48.101 of the Business and Commerce Code.

You next assert that the full name and birth date of the employee at issue are excepted from public disclosure under section 552.101 in conjunction with section 418.176 of the Government Code. This section was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.176 provides in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing,

detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. See Gov't Code § 552.301(e)(1)(A).

The purpose of the HSA is to protect certain information that is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. The information at issue consists of routine personnel information that was collected, assembled, or maintained by Parkland during the regular course of business. You have not established that any of this information is maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or criminal activity related to terrorism. See Gov't Code §§ 418.176(a); Open Records Decision Nos. 542 (1990) (governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Thus, none of the information at issue is confidential under section 418.176 of the Government Code. We therefore conclude that Parkland may not withhold the full name or birth date of the employee at issue under section 552.101 in conjunction with section 418.176 of the Government Code.

Section 552.101 also encompasses information protected by common-law privacy. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks-Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be

protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address Parkland's section 552.101 and 552.102 privacy claims together.

Information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature"); *see also* Gov't Code § 552.022(a)(2) (name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body are public information). Although you assert that the full name and birth date of the employee at issue should be protected from disclosure, names and birth dates are not intimate or embarrassing. *Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, n.p.h.) ("We hold that date-of-birth information is not confidential[.]"); *see* Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy). Upon review, we find that you have failed to explain how any portion of the responsive information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Thus, we conclude that the submitted information is not protected by common law privacy, and no portion of the information may be withheld under section 552.101 or 552.102 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After reviewing the submitted information, we find that it does not contain information that is confidential under constitutional privacy; therefore, Parkland may not withhold any of the submitted information under section 552.101 on that ground.

You finally assert that the birth date at issue is an access device number subject to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is

confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* Upon review, we find that Parkland has failed to demonstrate how employee birth dates constitute access device numbers subject to section 552.136. Therefore, Parkland may not withhold any of the information at issue pursuant to section 552.136 of the Government Code. As you raise no other exceptions to disclosure of this information, the responsive information we have marked must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 341950

Enc. Submitted documents

cc: Requestor
(w/o enclosures)