



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2010

Ms. Nneka C. Egbuniwe  
Deputy General Counsel  
Parkland Health and Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2010-14489

Dear Ms. Egbuniwe:

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# 394603.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district") received a request for (1) all communications between the district and UT Southwestern Medical Center at Dallas (the "center") from 1998 to the present for sixteen specified individuals, especially focusing on termination, severance, complaints, disciplinary action, grievances, and actions taken against these individuals and (2) all documents and communications to and from the Joint Commission (the "commission"), especially in regards to any adverse findings or actions taken against the district or the center from 1998 to the present. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>Although you also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5 for portions of the submitted information, we note the proper exceptions to raise when asserting the attorney-client privilege and the attorney work product privilege for information not subject to section 552.022 are sections 552.107 and 552.111, respectively. *See* Open Records Decision Nos. 676 at 1-2 (2002), 677 (2002).

<sup>2</sup>We 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, you inform us the district asked the requestor to clarify the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010). You state the district has not received a response to its request for clarification. However, a governmental body must make a good-faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You inform us that the district interprets the first part of the request to encompass all communications between the district and the center from 1998 to the present regarding the sixteen specified individuals which pertain only to termination, severance, complaints, disciplinary action, grievances, and actions taken against these individuals.<sup>3</sup> You also inform us that the district interprets the second part of the request to encompass all documents and communications between the district and the commission regarding any adverse finding or action taken against the district from 1998 to the present. In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for this information, we consider the district to have made a good-faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information. We further determine the district has no obligation at this time to release any additional information that may be responsive to the request for which it has not received clarification. However, if the requestor responds to the request for clarification, the district must again seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 161.032 of the Health and Safety Code, which 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 . . . and records, information, or reports provided by a medical committee . . . to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

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<sup>3</sup>You represent that, according to the district's understanding of the request, the district does not maintain documents concerning seven of the specified individuals. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. 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), 563 at 8 (1990), 555 at 1-2 (1990).

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a “‘medical committee’ includes any committee, including a joint committee, of . . . (3) a university medical school or health science center[.]” *Id.* § 161.031(a)(3). 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). Section 161.0315 provides in relevant part that “[t]he governing body of a . . . university medical school or health science center . . . 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 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); *Hood v. Phillips*, 554 S.W.2d 160 (Tex. 1977); *Texarkana Memorial Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977); *McAllen Methodist Hosp. v. Ramirez*, 855 S.W.2d 195 (Tex. App.—Corpus Christi 1993), *overruled on other grounds*, *Memorial Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Doctor’s Hosp. v. West*, 765 S.W.2d 812 (Tex. App.—Houston [1st Dist.] 1988, no writ); *Goodspeed v. Street*, 747 S.W.2d 526 (Tex. App.—Fort Worth 1988, orig. proceeding). These cases establish that “documents generated by the committee in order to conduct open and thorough review” are confidential. *Jordan*, 701 S.W.2d at 647-48. This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Id.* 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 statutory predecessor to section 161.032 of the Health and Safety Code). We note that 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 Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business).

You contend Exhibits B-1, B-5, B-7, as well as pages 1 through 19 of Exhibit B-6, were created or collected at the direction of the hospital’s Committee on Practitioner Peer Review and Assistance (“COPPRA”). You explain COPPRA is responsible for identifying and managing the physical and mental health issues of the district’s physicians. Upon review, we agree COPPRA constitutes a medical peer review committee as defined by section 161.031. We also find that some of the information at issue, including communications between members of COPPRA, communications between COPPRA and the medical professionals to whom physicians were referred to for independent evaluation, and COPPRA’s findings and recommendations, is subject to section 161.032. Accordingly, the district must withhold Exhibit B-1 in its entirety, page 1 of Exhibit B-6, and pages 17 through 27 of Exhibit B-7. However, you do not provide any explanation as to how the remaining information at issue, including human resources forms and letters, consists of the

records and proceedings of a medical committee. You have also failed to demonstrate how this information was not created in the regular course of business. See *Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (regular course of business means “records kept in connection with the treatment of . . . individual patients as well as the business and administrative files and papers apart from committee deliberations” and privilege does not prevent discovery of material presented to hospital committee if otherwise available and “offered or proved by means apart from the record of the committee.” (quoting *Texarkana Memorial Hosp.*, 551 S.W.2d at 35-6)). Therefore, the remaining information at issue in Exhibits B-5, B-6, and B-7 may not be withheld under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

You contend Exhibits B-2, B-3, B-8, B-9, and B-10 were created or collected at the direction of the district’s Patient Care Review Committee (“PCRC”). You explain PCRC is responsible for investigating alleged patient care issues. Upon review, we agree PCRC constitutes a medical peer review committee as defined by section 161.031. We also find that some of the information at issue, including correspondence written by members of PCRC and documents resulting from the PCRC’s internal investigations, is subject to section 161.032. Accordingly, the district must withhold Exhibits B-2 and B-3 in their entirety, as well as pages 6 through 33, the information we have marked on page 39, pages 43 through 45, pages 47 and 48, the information we have marked on page 49, page 50, and the information we have marked on pages 51 and 56 of Exhibit B-10. However, you do not provide any explanation as to how the remaining information at issue, including e-mails between attorneys pertaining to an employment lawsuit and e-mails pertaining to a possible transfer of an employee from the center to the district, consists of the records and proceedings of a medical committee. Therefore, the remaining information at issue in Exhibits B-8, B-9, and B-10 may not be withheld under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

You contend Exhibit C consists of documents used to evaluate the district’s compliance with the commission’s accreditation process. In *Humana Hospital Corporation v. Spears-Petersen*, the court found that the commission is a medical committee under section 161.031(a)(2), and its accreditation report of a hospital is confidential under section 161.032.<sup>4</sup> See *Humana Hospital Corp. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. App.—San Antonio 1993, no pet.). Based on your representations and our review, we conclude Exhibit C constitutes records, information, or reports of a medical committee acting under subchapter D of chapter 161 of the Health and Safety Code. We therefore conclude that this information is confidential under section 161.032(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

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<sup>4</sup>You inform us that the commission was formerly known as the Joint Commission on Accreditation of Healthcare Organizations.

You also claim that the information that may not be withheld under section 161.032(a) is subject to section 160.007 of the Occupations Code, which provides:

(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). Upon review, we find that you have failed to establish the applicability of section 160.007 of the Occupations Code to the remaining information at issue in Exhibits B-5, B-6, B-7, B-8, B-9, and B-10. Thus, this information may not be withheld under section 552.101 in conjunction with this statute.

You also raise section 552.101 in conjunction with the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b), (c). This office has concluded that, when a file is created as the result of a hospital stay, all the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Upon review, we agree a portion of the submitted information, which we have marked on page 12 of Exhibit B-5 and pages 3, 5, 11, and 12 of Exhibit B-7, consists of information subject to the MPA. The district may only disclose this information in accordance with the MPA. However, we find that no portion of the remaining information constitutes a medical record for the purposes of the MPA. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses section 241.152 of the Health and Safety Code, which states in relevant part:

(a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." *Id.* § 241.151(2). In this instance, you do not explain how the information at issue identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient. Thus, we find you have failed to establish that the remaining information is confidential under section 241.152 of the Health and Safety Code. Accordingly, the remaining information may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office also has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600. Generally, however, the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee's actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. *See* Open Records Decisions Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (scope of public employee privacy is narrow). Upon review, we find a portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the district must withhold the information we marked on pages 3 and 14 of Exhibit B-5, pages 4 and 8 of Exhibit B-6, page 1 of Exhibit B-7, and pages 39, 51, and 52 of Exhibit B-10 under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455. The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find that no portion of the remaining information at issue falls within the zones of privacy or otherwise implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the district may not withhold this information under section 552.101 in conjunction with constitutional privacy.

You claim pages 12 and 13 of Exhibit B-5, pages 20 and 21 of Exhibit B-6, and pages 1 through 9 of Exhibit B-9 are subject to section 552.107(1) of the Government Code. Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002).

First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element.

Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission

of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state pages 20 and 21 of Exhibit B-6 consist of communications between a district attorney and a district employee, pages 12 and 13 of Exhibit B-5 consist of communications between district employees, and pages 1 through 9 of Exhibit B-9 consist of communications between outside counsel for the district and outside counsel for the center. You explain, and have submitted a “Joint Defense Agreement” showing, the district shares a joint defense in connection with a lawsuit filed against both the district and the center. *See In re Monsanto*, 998 S.W.2d 917, 922 (Tex. App.—Waco 1999, no pet.) (discussing the “joint-defense” privilege incorporated by rule 503(b)(1)(C)). Furthermore, you represent all of the communications at issue were made for the purpose of the rendition of professional legal advice and these communications were intended to be confidential. Based upon your representations and our review, we conclude that the district may withhold pages 20 and 21 of Exhibit B-6 and pages 1 through 8 of Exhibit B-9, as well as the information we have marked on page 9 of Exhibit B-9, under section 552.107. However, we note that the remaining information at issue was communicated with both privileged and non-privileged parties. Therefore, pages 12 and 13 of Exhibit B-5 and the remaining portion of page 9 of Exhibit B-9 may not be withheld under section 552.107.

You claim the remaining portion of page 9 of Exhibit B-9 is excepted from disclosure under section 552.111 of the Government Code, which encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5. A governmental body seeking to withhold information under this exception bears the burden of demonstrating that the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. TEX. R. CIV. P. 192.5; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that:

(a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

*Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7.

You state the information at issue was prepared and developed by the district's attorneys. Upon review, however, we note the information at issue consists of an e-mail from opposing counsel to outside counsel for the district and the center. Accordingly, we find you have failed to demonstrate the information at issue consists of material prepared or mental impressions developed in anticipation of litigation or for trial by a party or a representative of a party. Therefore, the district may not withhold the remaining portion of page 9 of Exhibit B-9 under the work product privilege of section 552.111.

Next, you claim the remaining information in Exhibit B-9, which consists of the remaining portion of page 9 and pages 10 through 30, is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You inform us, and provide documentation showing, the district was named as a defendant in a lawsuit styled *Nassar v. UT Southwestern Health Systems, Parkland Health and Hospital System, Beth Levine, and J. Gregory Fitz*, cause number 3:08-CV-01337-B, which was filed in the United States District Court, Northern District of Texas, Dallas Division, prior to the district's receipt of the present request for information. Upon review, we conclude litigation was pending when the district received the request. You represent the information at issue is related to the pending litigation. Accordingly, we find section 552.103 is generally applicable to this information.

We note, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349 (1982), 320 (1982).* Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and must be disclosed. In this instance, the opposing party has seen the remaining portion of page 9 and pages 10 through 29. Therefore, these pages may not be withheld under section 552.103. However, the district may withhold page 30 of Exhibit B-9 under section 552.103. We further note the applicability of section 552.103(a) ends once the litigation has concluded. *See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).*

We note portions of the remaining information may be subject to section 552.117 of the Government Code.<sup>5</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989).* The district may only withhold information under

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<sup>5</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individuals at issue timely elected to keep their personal information confidential, the district must withhold the information we have marked on pages 3, 6, and 14 of Exhibit B-5, pages 4, 7, 8, 9, 12, and 19 of Exhibit B-6, page 15 of Exhibit B-7, and pages 22 and 23 of Exhibit 9 under section 552.117(a)(1).<sup>6</sup> Otherwise, this information may not be withheld under section 552.117.

We also note the remaining information contains personal e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked do not appear to be of types specifically excluded by section 552.137(c). Accordingly, the district must withhold the marked e-mail addresses on pages 10 through 16 and pages 19, 22, 23, and 24 of Exhibit B-9 under section 552.137, unless the owners have affirmatively consented to release.<sup>7</sup> *See id.* § 552.137(b).

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The district may only release the marked medical records in accordance with the MPA. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district may withhold pages 20 and 21 of Exhibit B-6 and pages 1 through 8 of Exhibit B-9, as well as the information we have marked on page 9 of Exhibit B-9, under section 552.107 of the Government Code. The district may withhold page 30 of Exhibit B-9 under section 552.103 of the Government Code. To the extent the individuals at issue timely elected to keep their information confidential, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137, unless the owners have affirmatively consented to release. The district must release the remaining information.

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<sup>6</sup>Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>7</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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](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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Tamara H. Holland". The signature is written in a cursive style with a large initial "T".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/em

Ref: ID# 394603

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

SC AUG 26 2015

At 1420 M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-10-003749

DALLAS COUNTY HOSPITAL  
DISTRICT d/b/a PARKLAND HEALTH  
AND HOSPITAL SYSTEM,  
Plaintiff

v.

GREG ABBOTT, ATTORNEY  
GENERAL OF TEXAS,  
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>TH</sup> JUDICIAL DISTRICT

**AGREED ORDER OF DISMISSAL**

This cause is an action under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff Dallas County Hospital District, d/b/a Parkland Health and Hospital System ("DCHD"), Defendant Ken Paxton, Attorney General of Texas<sup>1</sup> (Attorney General) agree that this matter should be dismissed pursuant to PIA section 552.327 on the grounds that the requestor has abandoned his request for information.

A court may dismiss a PIA suit under § 552.327 when all parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request for information in writing or has abandoned the request. *See* Tex. Gov't Code § 552.327. The Attorney General represents to the Court that the requestor, Mark Eriksson, has abandoned his request for information. Further, Letter Ruling OR2010-14489 will not be considered a previous determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if precisely the same information is requested again, the Defendant may ask for a decision from

<sup>1</sup> Greg Abbott was sued in his official capacity as the Attorney General of the State of Texas. Ken Paxton is his successor in office and the proper defendant in this lawsuit.



the Attorney General under Tex. Gov't Code § 552.301(g). Accordingly, the Defendant is not required to disclose the requested information subject to release in Letter Ruling OR2010-14489. The parties request that the Court enter this Agreed Order of Dismissal.

The Court is of the opinion that entry of an agreed dismissal order is appropriate.

It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is DISMISSED in all respects;

All court costs and attorney fees are taxed to the party incurring same;

All other requested relief not expressly granted herein is denied;

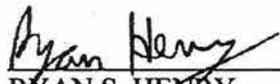
This order disposes of all claims between the parties and is final.

Signed this 26<sup>th</sup> day of August, 2015.



JUDGE PRESIDING

AGREED:



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