



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2010

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

OR2010-16352

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# 398442.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received a request for two spreadsheets, one as of December, 2009, and the other current (as of August 11, 2010), to include the following information pertaining to all Parkland employees: full names, job titles, pay rates, gender, ethnicity, start dates, employee ID numbers, and work telephone numbers. You claim that the requested information is excepted from disclosure under sections 552.150 and 552.151 of the Government Code. Parkland also provided notice to its employees of this request for information.¹ See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from some of the third parties and from an attorney on behalf of the requestor. *Id.* We have considered the claimed exceptions and reviewed the submitted information.²

¹You inform us that the hospital employs more than 9,000 employees (collectively, the "third parties").

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 question of whether Parkland must release to the public under the Act some of the requested information is before the court in litigation Parkland brought against this office. *See Dallas County Hosp. Dist. v. Abbott*, No. D-1-GN-10-000812 (353rd Dist. Ct., Travis County, Tex.). Accordingly, we will allow the trial court to resolve the issue of whether the information at issue in the litigation must be released to the public.

Next, we note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-02881 (2010). In that decision, we ruled, among other things, that Parkland must withhold portions of the information at issue under section 552.150 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, and as this information is not at issue in the litigation, Parkland must continue to rely on the ruling as a previous determination and withhold the information we ruled is subject to section 552.150 in accordance with Open Records Letter No. 2010-02881. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the requested information we did not rule is subject to section 552.150, we will consider your arguments against disclosure.

We next address the requestor's arguments submitted by the requestor's attorney. The requestor claims that some of the information responsive to the instant request was previously released to the public. Pursuant to subsections (b) and (c) of section 552.303 of the Government Code, we requested additional information from you as to whether Parkland had previously released responsive information. In response to our inquiry, you inform this office that on December 24, 2009, Parkland released "an electronic roster of all [Parkland] employees excluding the information of employees whose requests for exemption were then pending determination by [the attorney general]. The information provided included each employee's full name, job title, hourly pay rate, gender, ethnicity, and employment start date." The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Further, once this office has determined that information is not excepted from disclosure, a governmental body may generally not seek another ruling pertaining to precisely the same information. *See* Gov't Code § 552.301(f); Open Records Decision No. 665 at 2 (2000) (governmental body not authorized to seek attorney general decision unless it in good faith believes valid legal arguments exist to support claimed exception). Accordingly, Parkland may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential by law. Parkland asserts that the information at issue is excepted

from public disclosure under sections 552.150 and 552.151 of the Government Code, which are confidentiality provisions designed to protect third party interests. Accordingly, we will consider Parkland's claims under sections 552.150 and 552.151 for the information that was previously released. *See* Open Records Decision No. 400 (1983) (prohibition against selective disclosure does not apply when governmental body releases confidential information).

Next, we address the requestor's contention that Parkland did not comply with the procedural requirements of section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. The requestor argues the copy of the written comments sent to him were excessively redacted and concealed the arguments Parkland made to this office. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Id. § 552.301(e-1). Parkland sent the requestor a copy of the written comments submitted to this office requesting a decision and stating the exceptions that apply. *See id.* § 552.301(d). However, after reviewing a copy of Parkland's brief that was sent to the requestor, we determine Parkland redacted more information than the statute permits; therefore, we conclude Parkland failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code.

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.150 and 552.151 can provide compelling reasons to overcome this presumption; therefore, we will address Parkland's arguments under these exceptions.

Section 552.150 of the Government Code provides as follows:

(a) Information in the custody of a hospital district that relates to an employee or officer of the hospital district is excepted from the requirements of Section 552.021 if:

(1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual, such as information that describes or depicts the likeness of the individual, information stating the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks; and

(2) the employee or officer applies in writing to the hospital district's officer for public information to have the information withheld from public disclosure under this section and includes in the application:

(A) a description of the information; and

(B) the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual.

(b) On receiving a written request for information described in an application submitted under Subsection (a)(2), the officer for public information shall:

(1) request a decision from the attorney general in accordance with Section 552.301 regarding withholding the information; and

(2) include a copy of the application submitted under Subsection (a)(2) with the request for the decision.

Gov't Code § 552.150. Section 552.150 provides that information held by a hospital district relating to a hospital district employee or officer is excepted from public disclosure provided (1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual; and (2) the employee or officer makes a written application in accordance with section 552.150(a)(2) to the hospital district's officer for public information to have the information withheld from public disclosure under this section. *Id.* The individual's application must include a description of the information at issue and the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise his or her safety. *Id.*

The requestor asserts that Parkland's submission of applications from its employees or officers that were written subsequent to Parkland's receipt of the request for information,

request for a decision from this office, or tender of its brief to this office pursuant to section 552.301(e), violates the intent of section 552.150. Section 552.150 does not establish a time period during which the employee or officer must make a written application to have the information withheld from public disclosure under this section. *Id.* Thus, we can not impose one. To do so, would thwart the purpose of the statute to protect from disclosure information that if released would compromise the safety of hospital district employees and officers. *Id.* Moreover, an employee or officer cannot comply with the statute's requirement to include "a description of the information" the employee or officer seeks to protect until the employee or officer knows what information is requested. *Id.* § 552.150(a)(2)(A). The statute's application process, to be effective, must allow the employee or officer to seek protection after the request is received so that the employee or officer can "demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual." Also, section 552.150(b), which sets out the procedures the officer for public information must follow in seeking protection for information under section 552.150, imposes no deadline on a hospital district for submitting a copy of an application to this office. *Id.* § 552.150(b). Although section 552.150(b) states a hospital district shall include the application with the request for a decision, it does not prohibit the later submission of additional applications. Thus, the fact that an employee or officer submitted an application for confidentiality after Parkland received the request for information does not mean section 552.150 cannot apply.

Parkland has provided this office with copies of written applications sent to Parkland's officer for public information from, or on behalf of, two hundred thirty-three employees, including an application by the director of Parkland's Victim Intervention Program / Rape Crisis Center (the "center") seeking protection pursuant to section 552.150 on behalf of all center staff members. Parkland also provided copies of the written applications sent to Parkland's officer for public information from thirty-four employees whose 2009 information was the subject of our prior ruling in Open Records Letter No. 2010-02881.³ In these applications, the employees, or their representatives, describe the information at issue, explain their specific circumstances and concerns, and ask that their information not be publicly disclosed. Upon review and consideration of these applications, we determine that, to the extent the applicant's information is not at issue in the litigation or subject to the previous determination, some of the applicants have described specific circumstances establishing that release of their names could "reasonably be expected to compromise the safety of the individual." *See* Gov't Code § 552.150(a)(1). Therefore, Parkland must withhold the names of the individuals whose applications we have marked under section 552.150 of the Government Code, including the names of all center staff members. In addition, to the extent that the individual's job title reveals the identity of an individual whose application we have marked, as, for example, when there is only one individual with that title, Parkland must also withhold the individual's job title under section 552.150.

³We note that some of the original thirty-four employees have submitted new applications related to the instant request.

However, we find none of the individuals to whom the remaining information at issue pertains has established that release of the remaining information could “reasonably be expected to compromise the safety of the individual.” *See id.*; *see also id.* § 552.022(a)(2) (“[The] name, sex, ethnicity, salary, title, and dates of employment of each employee and officer” of governmental body are public information under the Act unless “expressly confidential under other law.”). Thus, we find neither Parkland nor its employees and officers have demonstrated that section 552.150 is applicable to any of the remaining information at issue. Therefore, Parkland may not withhold any of the remaining information at issue under section 552.150 of the Government Code.

Parkland also raises section 552.151 of the Government Code, which provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.151. Upon review, we find Parkland has failed to demonstrate that release of the remaining information at issue would subject an employee to a substantial threat of physical harm. Therefore, we conclude section 552.151 is inapplicable to the remaining information at issue, and Parkland may not withhold any of the remaining information on that basis.

In summary, we will allow the trial court to resolve the issue of whether the information that is the subject of pending litigation must be released to the public. Parkland must continue to withhold the information we ruled is subject to section 552.150 in accordance with Open Records Letter No. 2010-02881. Parkland must withhold the names of those individuals whose applications we have marked, including all center staff members, under section 552.150 of the Government Code. To the extent an individual’s job title reveals the identity of the individual whose application we have marked, Parkland must also withhold the individual’s job title under section 552.150. The remaining information must be released to the requestor.

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

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 398442

Enc. Submitted documents

c: Requestor
(w/o enclosures)