



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2011

Mr. Geoff Barr
Denton, Navarro, Rocha & Bernal
For Dallas County Hospital District
2517 North Main Avenue
San Antonio, Texas 78212

OR2011-04211

Dear Mr. Barr:

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# 412642.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for the photographs published in the Fall 2009 issue of *Parkland* magazine. You state some of the requested photographs have been released. You claim some of the remaining photographs are not subject to the Act. Alternatively, you claim that all of the remaining photographs are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your assertion that, pursuant to section 181.006 of the Health and Safety Code, some of the submitted photographs are not subject to the Act. Section 181.006 provides as follows:

[f]or a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Subsection 181.006(2) does not remove protected health information from the Act's application, but rather states this information is "not public

information and is not subject to disclosure under [the Act].” We interpret this to mean a covered entity’s protected health information is subject to the Act’s application. Furthermore, section 181.006, when demonstrated to be applicable, makes confidential information it covers. Thus, we will consider your argument under section 552.101 for the submitted information.

Next, we note, and you acknowledge, that the photographs at issue were previously released to the public as part of a magazine published by the district, and are currently available online. We note that section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov’t Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the district may not now withhold the previously released photographs unless their release is expressly prohibited by law or the information is confidential under law. You raise section 552.101 of the Government Code for the submitted information. Section 552.101 makes information confidential under law; thus, we will address your arguments under section 552.101 for the submitted information.

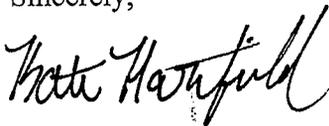
Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). You seek to withhold the submitted photographs because you argue that the requestor, as a reporter for a newspaper, could use the photographs for the economic benefit of his employer. This office has determined the Act does not permit the consideration by a governmental body or this office of a requestor’s intended use of information when responding to open records requests. *See* Gov’t Code § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 (1988) at 2 (motives of a person seeking information under the Act are irrelevant), 51 (1974). Accordingly, the requestor’s purpose in seeking the requested information is irrelevant. We will only consider the test set forth in *Industrial Foundation* in deciding whether the submitted information must be withheld under common-law privacy.

Upon review, we conclude some of the submitted information is highly intimate or embarrassing. However, we note that you have informed our office that the district obtained the written consent of all the individuals depicted in the submitted photographs for the publication of the photographs in the magazine. Although you state this consent is revocable, you have not demonstrated that any of the individuals at issue have revoked their consent. Accordingly, because the individuals depicted in the submitted photographs have consented to their publication, we find these individuals have waived their right to privacy with respect to these photographs. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star Telegram, Inc. v. Walker*, 834 S.W 2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Because these individuals have waived their right to privacy, none of the submitted photographs may be withheld on the basis of common-law privacy. As you raise no further arguments against disclosure, the district must release the submitted photographs.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/tf

Ref: ID# 412642

Enc. Submitted documents

c: Requestor
(w/o enclosures)