



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2011

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

OR2011-08377

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# 420362.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received three requests from the same requestor for the vendor list, check register, and payroll register, including specified fields, for the last three years.¹ You indicate Parkland will withhold the following: (a) certain personal information of employees subject to section 552.117 of the Government Code under section 552.024 of the Government Code; (b) social security numbers pursuant to section 552.147(b) of the Government Code; and (c) the personal information of peace officers pursuant to the previous determination issued by

¹We note that Parkland asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

this office in Open Records Decision No. 670 (2001).² You claim some of the submitted information is not subject to the Act and, in the alternative, this information and the remaining submitted information are excepted from disclosure under sections 552.101, 552.150, and 552.151 of the Government Code. We note Parkland also provided notice to its employees of this request for information.³ See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted representative sample of information.⁴

Initially, we note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2010-02881 (2010), 2010-16352 (2010), and 2011-03032 (2011). In those decisions, we ruled that (a) 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, (b) Parkland must withhold portions of the information at issue under section 552.150 of the Government Code, and (c) the remaining information must be released. As we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, Parkland must continue to rely on Open Records Letter Nos. 2010-02881, 2010-16352, and 2011-03032 as previous determinations and withhold or release the information at issue in accordance with those rulings. 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

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. See Gov't Code § 552.024(c)(2). Section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See *id.* § 552.147(b). Open Records Decision No. 670 at 6 (2001) authorizes a governmental body to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2). See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

³You inform us Parkland employs more than 9000 employees.

⁴We 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.

remaining information not subject to Open Records Letter Nos. 2010-02881, 2010-16352, and 2011-03032, we will consider your submitted arguments.

We now address your argument that portions of the remaining information are not subject to the Act. You contend that, pursuant to section 181.006 of the Health and Safety Code, portions of the submitted check register and vendor list are not subject to the Act. Section 181.006 states that: [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, this statute, when demonstrated to be applicable, makes confidential the information it covers. Thus, we will consider whether section 181.006 makes this information confidential.

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. Section 552.101 encompasses information protected by other statutes, such as section 181.006. As noted above, section 181.006 states that "[f]or a covered entity that is a governmental unit, an individual's protected health information . . . is not public information and is not subject to disclosure under [the Act]." Health & Safety Code § 181.006. Section 181.001(b)(2) defines "[c]overed entity," in part, as "any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]"

Id. § 181.001(b)(2). You inform us Parkland operates a hospital that maintains health information for the individuals it serves, including information showing that an individual received medical care from Parkland. You assert the information collected, used, and stored

by Parkland consists of protected health information. Thus, you claim Parkland is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether Parkland is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether Parkland engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states that “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [“HIPAA”].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual[.]

Id. Further, “health care” is defined as “care, services, or supplies related to the health of an individual.” *Id.* The information at issue consists of entries in Parkland’s check register and vendor list. You explain some of the entries relate to the past, present, or future payment for the provision of health care to individual patients, who are each identified in those entries. Upon review, we agree this information contains individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the information at issue contains protected health information for purposes of section 181.006 of the Health and Safety Code. Therefore, with respect to the information at issue, Parkland is a health care entity that is in the practice of collecting, using, and storing protected health information and, consequently, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Accordingly, Parkland must withhold as protected health information the entries in the submitted check register and vendor list that relate to the past, present, or future payment for the provision of health care to an individual under section 552.101 of the Government Code in conjunction with section 181.006 of the Health

and Safety Code.⁵ The remaining entries are not protected health information and may not be withheld under section 552.101 on the basis of section 181.006.

You also claim section 552.101 in conjunction with section 241.152 of the Health and Safety Code, which provides in part:

(a) Except as authorized by Section 241.153 [of the Health and Safety Code], 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). We find the remaining information does not identify a patient. Therefore, Parkland may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.

Section 552.101 of the Government Code encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA is applicable to medical records. Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

⁵As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code or section 241.152 of the Health and Safety Code.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find that none of the remaining information constitutes a medical record for the purposes of the MPA. Thus, Parkland may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 type 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. This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990); 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); 432 at 2 (1984) (scope of public employee privacy is narrow).

You state the submitted payroll registry includes information identifying the type and value of voluntary payroll deductions of each Parkland employee. You assert this information is subject to common-law privacy. We have marked a sample of the types of personal financial information that are highly intimate or embarrassing and not of legitimate public concern. Therefore, Parkland must withhold the types of information we have marked pursuant to

section 552.101 of the Government Code in conjunction with common-law privacy.⁶ However, none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, Parkland may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses constitutional privacy, which 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. *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 at 3-7. 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. ORD 455 at 4. 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.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate how any of the remaining information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, Parkland may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy.

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:

⁶As our ruling on this information is dispositive, we need not address your argument against its disclosure under section 552.101 of the Government Code in conjunction with constitutional privacy.

(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.*

Parkland has provided this office with copies of written applications sent to Parkland's officer for public information from, or on behalf of, ninety-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. 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 Open Records Letter Nos. 2010-02881, 2010-16352, or 2011-03032, most of the applicants have described specific circumstances pertaining to the individual establishing that release of their names could "reasonably be expected to compromise the safety of the individual." *See id.* § 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.⁷ Although some of these individuals

⁷As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

also seek to withhold their job titles, we note the submitted information does not contain any job titles. We find none of the individuals to whom the remaining information at issue pertains have 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 you have failed to demonstrate that release of the remaining information at issue would subject the employees 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 portion of the remaining information on that basis.

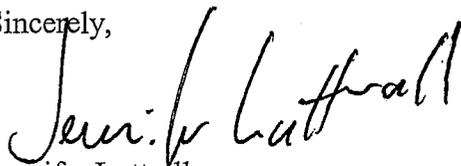
In summary, Parkland must continue to rely on Open Records Letter Nos. 2010-02881, 2010-16352, and 2011-03032 as previous determinations and withhold or release the information at issue in accordance with those rulings. Parkland must withhold the entries in the submitted check register and vendor list that relate to the past, present, or future payment for the provision of health care to an individual under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code. Parkland must withhold the types of information we have marked in the payroll registry pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. 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. 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,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the typed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 420362

Enc. Submitted documents

c: Requestor
(w/o enclosures)