



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2011

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

OR2011-11023

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# 425599.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received a request for all incident reports in the last five years concerning battery ingestion. You assert the requested information is not public information subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ You also believe release of the information may implicate the interests of third parties. Accordingly, you provide documentation showing you have notified these third parties of the request and their right to submit arguments to this office.² *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

¹While you also raised sections 552.111, 552.117, 552.137, and 552.147 in your letter dated May 26, 2011, you have not presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

² You notified the Texas Department of State Health Services, Commission on State Emergency Communications ("CSEC"), Texas Panhandle Poison Center, Central Texas Poison Center, South Texas Poison Center, Southeast Texas Poison Center, and West Texas Poison Center.

We have received comments from the Southeast Texas Poison Center (“Southeast”) and South Texas Poison Center (“South”). We have considered the submitted arguments and reviewed the submitted representative sample of information.³

We first address Parkland’s, South’s, and Southeast’s arguments that the requested information is not public information subject to disclosure under the Act. Parkland contends the requested information is not public pursuant to sections 81.046 and 161.0213 of the Health & Safety Code. Section 81.046 provides in relevant part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(a)-(b). Section 161.0213 provides:

Reports, records, and information furnished to the commissioner [of public health] or the commissioner’s designee or the Texas [Commission on Environmental Quality] that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under [the Act], and are subject to the same confidentiality requirements as described by Section 81.046 [of the Health and Safety Code].

Id. § 161.0213. Additionally, Parkland, South, and Southeast each contend the requested information is not public information pursuant to section 181.006 of the Health and Safety. Section 181.006 states:

For a covered entity that is a governmental unit, an individual’s protected health information:

³We assume 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 those records contain substantially different types of information than that submitted to this office.

(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].

Id. § 181.006. These three sections do not remove information from the Act's application. Sections 81.046 and 161.0213 of the Health and Safety Code state information covered by the respective sections is "not public information under [the Act]." *Id.* §§ 81.046(b), 161.0213. Section 181.006 of the Health & Safety Code similarly states information subject to that section is "not public information and is not subject to disclosure under [the Act]." *Id.* § 181.006(2). We interpret this to mean such information is subject to the Act's application; however, these statutes, when demonstrated to be applicable, make confidential the information they cover. Therefore, the requested information is not removed from the Act's application by section 81.046, 161.0213, or 181.006 of the Health and Safety Code and may not be withheld on that basis. Thus, because the requested information is subject to the Act's application, we will consider the submitted arguments against its disclosure.

Section 552.101 of the Government Code 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, such as section 181.006 of the Health and Safety Code. 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. A "covered entity" is, in part,

any person who . . . 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)(A). You inform us Parkland operates a poison control center that maintains health information for the individuals it serves, including information showing that an individual received medical care. You assert that 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 “assembling, collecting, analyzing, using, evaluating, storing or transmitting protected health information.” *Id.* 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. HIPAA defines “health care provider” as a person or organization who furnishes, bills, or is paid for health care in the normal course of business. *Id.* Further, “health care” is defined as “care, services, or supplies related to the health of an individual.” *Id.* You state Parkland “coordinate[s] the poison control activities and provide[s] educational and medical services to patients on behalf of CSEC within its designated geographic region.” You further inform this office that “[a]s part of providing poison control-related health care to patients, Parkland collects and stores information for CSEC, including but not limited to the patient’s medical history and information regarding the current issue for which the patient is receiving health care.” The submitted information consists of Parkland’s poison control center’s records that contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Therefore, the submitted information consists of protected health information for purposes of section 181.006 of the Health and Safety Code. Therefore, with respect to the requested information, Parkland is a health care provider that is in the practice of assembling, collecting, using, storing, and transmitting 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 the

requested information under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code.⁴

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/tf

Ref: ID # 425599

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we do not address Parkland's, South's, and Southeast's remaining arguments against disclosure.