



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2011

Ms. Jameene Y. Banks  
Denton, Navarro, Rocha & Bernal, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2011-13263

Dear Ms. Banks:

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# 430335.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland"), which you represent, received a request for all police reports pertaining to a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

You claim the submitted information is protected by section 552.108(b)(2) of the Government Code. Section 552.108(b)(2) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is the investigation of crimes and enforcement of criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). You explain the submitted information was documented and

maintained by the Parkland Police Department (the “department”) “for purposes of their internal records . . . as a part of the overall effort to protect the safety and welfare of the patient and other members of the hospital staff and the public.” You state the submitted report relates to an investigation by the department that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(b)(2) is applicable to the information at issue.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. Thus, with the exception of basic information, Parkland may withhold the submitted information under section 552.108(b)(2) of the Government Code.

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 & Safety Code. Section 181.006 states that: “for 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. Section 181.001(b)(2) defines “[c]overed entity,” in part, as:

[A]ny 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). We understand Parkland operates a hospital that maintains health information for the individuals it serves, including information showing that individuals received medical care from Parkland. You assert the basic information 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. However, we note the basic information consists of the department's records. You have not demonstrated how the department, a law enforcement agency, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the basic information is subject to section 181.006 of the Health and Safety Code. Accordingly, none of the basic information may be withheld under section 552.101 of the Government Code on that basis.

You next argue the basic information is excepted from public disclosure under section 576.005 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 576.005, which provides that "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." *Id.* § 576.005. Upon review, we find you have failed to demonstrate how any of the basic information constitutes a record of a mental health facility that is subject to section 576.005 of the Health and Safety Code. Therefore, none of the basic information may be withheld under section 552.101 of the Government Code on this basis.

You also contend the basic information is confidential under section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 611.002, which is applicable to mental health records and provides in pertinent part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

*Id.* § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). Upon review, we find none of the basic information consists of mental health records. Accordingly, Parkland may not withhold any of this information under section 552.101 of the Government Code on the basis of section 611.002(a) of the Health and Safety Code.

Section 552.101 of the Government Code 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. 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 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

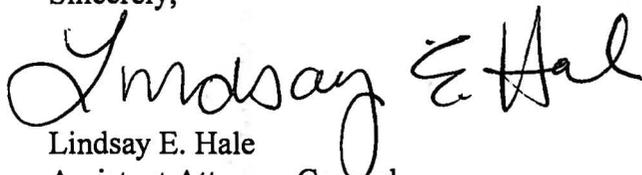
(1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that some of the basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, Parkland must withhold the information we have marked within the basic information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate that any of the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, Parkland may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, Parkland may withhold the submitted information under section 552.108(b)(2) of the Government Code. In releasing basic information, Parkland must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bs

Ref: ID# 430335

Enc. Submitted documents

c: Requestor  
(w/o enclosures)