



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2011

Mr. Ryan S. Henry  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 West William Cannon Drive, Suite 609  
Austin, Texas 78745

OR2011-13940

Dear Mr. Henry:

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# 431249.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland"), which you represent, received a request for the personnel files of a named former employee. You state you will withhold certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> We understand Parkland will also withhold the personal information of employees subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We understand you to claim the submitted information is also excepted from disclosure under

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<sup>1</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>See Gov't Code § 552.024(c)(2) (if employee or official or former employee or official chooses not to allow public access to his or her personal information, governmental body may redact information without necessity of requesting decision from this office).

section 552.101 of the Government Code.<sup>3</sup> We have received comments from the United States Department of Justice (the “DOJ”) and the requestor’s attorney. *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the requestor’s attorney’s contention that Parkland did not comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See id.* § 552.301(a). The requestor’s attorney states the copy of the written comments sent to the requestor did not include exhibits that provided the substance of Parkland’s arguments under sections 552.101 and 552.103. The requestor’s attorney argues that without the exhibits, the copy of the written comments sent to the requestor was not sufficient and omits some of the arguments Parkland has made to this office. Section 552.301(e)(1)(A) requires the governmental body to submit to this office “written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]” *Id.* § 552.301(e)(1)(A). Section 552.301(e-1) provides as follows:

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 its brief to this office requesting a decision and stating the exceptions that apply. *See id.* § 552.301(d). However, Parkland did not send the requestor a copy of Exhibits D and E. Parkland states in its brief that the submitted information is excepted from disclosure “[b]ecause of Exhibit D” and “[s]upport for this argument is included in Exhibit E.” Parkland further states that “due to Exhibit D” the submitted information is subject to section 552.103. Upon review of Exhibits D and E, we find they constitute the substance of Parkland’s arguments under sections 552.101 and 552.103 and do not disclose or contain the substance of the information requested. Therefore, we conclude Parkland failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code.

Section 552.103 is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may

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<sup>3</sup>Parkland claims in its brief to this office that the submitted “documents are confidential by law.” Thus, we understand Parkland to raise section 552.101 of the Government Code as an exception to disclosure of the submitted information.

waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). In failing to comply with section 552.301(e-1) with regard to its claim under section 552.103, the Parkland has waived this exception with regard to the instant request for information because section 552.103 is not a compelling reason to withhold the information. *See* Gov't Code § 552.302; *see also id.* § 552.007; Open Records Decision No. 400 at 2 (1983). Therefore, Parkland may not withhold any of the submitted information under section 552.103 of the Government Code. However, because section 552.101 is not a discretionary exception to disclosure, we will address Parkland's argument under this exception.

Next, we note this office has received a letter from the DOJ in which it asserts a law enforcement interest in the information at issue. Therefore, we will determine whether Parkland may withhold any of the information at issue on behalf of the DOJ under section 552.108.

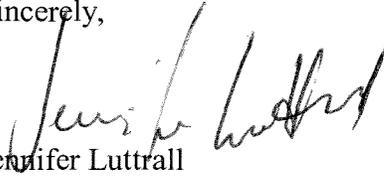
Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987).

Although Parkland does not raise section 552.108 of the Government Code for the submitted information, we have received a letter from the DOJ informing us it seeks to withhold the submitted information under section 552.108(a)(1). The DOJ states the information at issue pertains to a pending criminal investigation it is conducting, and release of this information would interfere or prejudice its ongoing investigation. Based on the DOJ's representations and our review, we determine the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, Parkland may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the DOJ. As our ruling is dispositive, we need not address Parkland's arguments against disclosure.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JLU/dls

Ref: ID# 431249

Enc. Submitted documents

c: Requestor's Attorney  
(w/o enclosures)

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