



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2011

Mr. Ryan S. Henry
For Dallas County Hospital District
d/b/a Parkland Health and Hospital System
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2011-14407

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# 432050.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland"), which you represent, received a request for all e-mail correspondence sent and received by a named individual.¹ You state you will withhold certain information pursuant to Open Records Decision No. 684 (2009).² You claim portions of the submitted information are not subject to the Act. Additionally and alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.116 of the Government Code. 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

¹You note that Parkland received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

should not be released). We have considered the submitted arguments and reviewed the submitted information.

Next, we address your argument that a portion of the requested information is not public information subject to the Act. The Act applies to “public information,” which is defined by section 552.002 of the Government Code as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it. *Id.* § 552.002; *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1). You indicate some of the submitted e-mails are not public information subject to the Act. You state the e-mails at issue are personal in nature. You argue the e-mails at issue have no connection to Parkland’s business and represent permitted incidental use of Parkland’s e-mail system. Upon review, we agree this information, which we have marked, does not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for Parkland. *See Gov’t Code* § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Thus, these e-mails do not constitute public information as defined by section 552.002 and Parkland is not required to release them under the Act.

Next, 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 Gov’t Code* § 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 552.103 and 552.108. 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 Exhibit F. Parkland states in its brief that the submitted information is excepted from disclosure “[b]ecause of Exhibits F and G” and “[s]upport for this argument is included in Exhibit G.” Parkland further states that “due to Exhibits F and G” the submitted information is subject to sections 552.103 and 552.108. The requestor’s attorney acknowledges that Parkland has released Exhibit G. However, the requestor’s attorney also states Parkland has not released Exhibit F. Upon review of Exhibit F, we find it constitutes the substance of Parkland’s arguments under sections 552.103 and 552.108 and does 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.

Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect 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 waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301(e-1) with regard to its claims under sections 552.103 and 552.108, Parkland has waived these exceptions with regard to the instant request for information because sections 552.103 and 552.108 are not compelling reasons to withhold the information. *See Gov’t Code* § 552.302; *see also id.* § 552.007; Open Records Decision No. 400 at 2 (1983). However, the interests of a governmental body other than the one that failed to comply with section 552.301 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. *See Open Records Decision Nos.* 586 (1991), 469 (1987). 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 of the Government Code.

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).

The DOJ states the remaining information pertains to a pending criminal investigation it is conducting. Based on the DOJ’s representations and our review, we determine the release of the remaining 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 remaining information under section 552.108(a)(1) of the Government Code. 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 432050

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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