



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Mr. Ryan S. Henry
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OR2011-14744

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# 431250.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland"), which you represent, received five requests from four requestors for specified contracts and all records relating to payments to a named company.¹ You state you will withhold certain information pursuant to Open Records Decision No. 684 (2009).² You claim some of the submitted information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.110, and 552.139 of the Government Code. In addition, you state release of some of the requested information may implicate the proprietary interests of a third party. Accordingly, you state you have notified Perot Systems ("Perot") of the request and its right to submit

¹We note Parkland sought and received clarification from one of the requestors. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *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 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

arguments to this office. *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). We have received and considered comments from the United States Department of Justice (the "DOJ") and from an attorney for one of the requestors. *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 note that you have submitted information pertaining to records relating to payments to companies other than the one named in the request. In addition, it also appears that some of the submitted information does not consist of the contracts specified in the requests. Thus, this information is not responsive to the present request. This decision does not address the public availability of this non-responsive information, and this information need not be released in response to this request.

Next, we note you have not submitted all of the contracts specified in the requests. To the extent additional information responsive to the requests existed and was maintained by Parkland on the date Parkland received the requests, we assume it has been released. If Parkland has not released such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address your argument that the responsive information includes information not subject to the Act. The Act is applicable to "public information," which section 552.002 of the Government Code defines as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body." Gov't Code § 552.002(a)(1). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in this decision and our review of the information at issue, we determine the computer usernames do not constitute public information under section 552.002 of the Government Code. Accordingly, the computer usernames are not subject to the Act, and Parkland is not required to release this information.³ However, we conclude that the remaining information is public information as defined by section 552.002 and is subject to disclosure under the Act. We will therefore address your arguments regarding disclosure of this information.

³As our ruling is dispositive, we do not address your arguments to withhold this information under the Act.

We next note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Perot explaining why the submitted information should not be released. Although we understand you to claim that some of the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the proprietary interests of third parties, not the interests of a governmental body. As we have not received any arguments from Perot, we have no basis for concluding that any portion of the submitted information constitutes its proprietary information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, Parkland may not withhold any of the information at issue on the basis of any proprietary interest Perot may have in the information.

Next, we note Parkland did not fully comply with section 552.301 of the Government Code. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). You state Parkland received one of the requests for information on July 12, 2011 and a later request on July 27, 2011. We note you timely provided written comments for sections 552.101, 552.103, 552.108, and 552.110 of the Government Code as exceptions to disclosure for both requests within the fifteen-business-day time period as required by subsection 552.301(e). However, you did not provide written comments for section 552.139 as an exception to disclosure for one of the requested contracts, which is responsive to both requests, until August 17, 2011, after the fifteen-business-day deadline for the first request had passed. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find Parkland failed to comply with the requirements of section 552.301(e) with respect to section 552.139.

We also address the requestor's attorney's assertion that Parkland did not comply with the procedural requirements of section 552.301 of the Government Code. 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 not later than the 15th business day after the date of receiving the written request. 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). Parkland states in its brief that support for its argument are included in the exhibits. However, Parkland did not send the requestor a copy of the exhibits. We find the requestor’s receipt of Parkland’s August 12, 2011 brief, which provides the substance of Parkland’s arguments under section 552.103, satisfies the statutory requirement under section 552.301(e-1). Thus, Parkland did not fail to comply with the procedural requirements set out in section 552.301(e-1) with respect to section 552.103. However, the August 12, 2011 brief omits the discussion of Parkland’s section 552.108 claim. We find the exhibits constitute the substance of Parkland’s arguments under section 552.108 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 with respect to section 552.108.

Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; 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 Gov’t Code § 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). We note the DOJ asserts a law enforcement interest in the information at issue. Therefore, we will determine whether Parkland may withhold the submitted information on behalf of the DOJ under section 552.108. Additionally, because section 552.139 of the Government Code is not a discretionary exception to disclosure, we will consider the applicability of this section to the submitted information. We will also consider the applicability of your timely-raised exceptions.

We note some of the responsive information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]” unless the information is expressly made

confidential under other law. Gov't Code § 552.022(a)(3). The information at issue contains contracts and information in accounts and vouchers relating to Parkland's expenditure of public funds that are subject to disclosure under section 552.022(a)(3). Although Parkland and the DOJ claim sections 552.103 and 552.108 of the Government Code for this information, we note those sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); ORDs 665 at 2 n.5, 177 at 3. As such, sections 552.103 and 552.108 are not other law that makes information confidential for purposes of section 552.022(a)(3). Therefore, Parkland may not withhold any of the information in the accounts, vouchers, or contracts under section 552.103 or section 552.108 of the Government Code. However, because sections 552.101 and 552.139 are "other law" for the purposes of section 552.022, we will consider your claims under sections 552.101 and 552.139 for the information at issue.

We first address the arguments for the information not subject to section 552.022. 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The DOJ objects to release of the submitted information because its release would interfere with a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue 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 information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code.⁴

⁴As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.

Now, we address the remaining information subject to section 552.022 of the Government Code. Section 552.139 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 5 (to be codified at Gov't Code § 552.139). Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Gov't Code § 2059.055(b). You state the remaining information at issue relates to computer network security. You explain this information reveals "the [security] assessments, the scope of the [security] assessments, the location of the hardware, and the security issues needing analysis." Based on your representations and our review, we find you have demonstrated some of the information at issue, a representative sample of which we have marked, relates to computer network security, the design, operation, or defense of Parkland's computer

network, or an assessment of Parkland's computer network vulnerabilities. Accordingly, Parkland must withhold the types of information we have marked under section 552.139 of the Government Code.⁵ However, you have not demonstrated how the remaining information relates to computer network security, or to the design, operation, or defense of Parkland's computer network as contemplated in section 552.139(a). Further, we find you have failed to explain how the remaining information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, Parkland may not withhold any of the remaining information at issue under section 552.139 of the Government Code.

You assert the remaining information subject to section 552.022 is excepted from disclosure under section 552.101 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." *Id.* § 552.101. This exception encompasses information that is made confidential by other statutes. Parkland raises section 552.101 in conjunction with provisions of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.177 provides that information is confidential if it:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.182 provides in part:

- (a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.
- (b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Id. § 418.182(a)-(b). The fact information may be related to a governmental body's critical infrastructure or security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert portions of the information at issue pertain to "security operations, training, procedures and guidelines for [Parkland] for the safety of employees as well as for patients and the public in general." You state this information relates to computer and physical location vulnerabilities. You further assert that release of this information "can expose the hospital to security breaches and jeopardize the safety of employees and patients as well as millions of dollars in equipment." However, upon review, we find Parkland failed to establish how any of the remaining information relates to assessments of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity or relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Consequently, Parkland may not withhold any of the remaining information under section 552.101 in conjunction with section 418.177 or section 418.182 of the Government Code.

Finally, we note portions of the remaining information may be protected by copyright. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with copyright law and the risk of a copyright infringement suit.

In summary, the computer username's are not subject to the Act, and Parkland is not required to release this information. Parkland may withhold the information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code. Parkland must withhold the types of information we have marked under section 552.139 of the Government Code. The remaining information must be released to the requestors, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 431250

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

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