



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2011

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-16724

Dear Ms. McClellan:

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# 440846 (DPD 2011-8855).

The Dallas Police Department (the "department") received a request for information pertaining to a specified service number. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See Gov't Code* § 552.301(b). In this instance, you state the department received the request for information on September 30, 2011. Accordingly, the ten-business-day deadline fell on

¹We 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 those submitted to this office.

October 14, 2011. However, the department submitted its request for a ruling to this office by fax on October 25, 2011, after that deadline had passed. Consequently, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Thus, we will consider your claims under section 552.101 of the Government Code, which can provide a compelling reason for non-disclosure under section 552.302.

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 section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996).

We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone numbers of 9-1-1 callers the department seeks to withhold. We conclude that, if the marked telephone numbers were furnished by a 9-1-1 service supplier, then the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. If the marked information was not provided by a 9-1-1 service supplier, then it may not be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

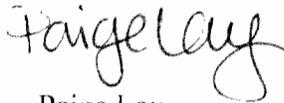
Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. 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. *See id.* at 681–82. The types 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. Upon review, we find the information you have marked is not highly intimate or embarrassing and of no legitimate public concern, and therefore may not be withheld on that basis. As no other exceptions to disclosure have been raised, the remaining information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 440846

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

10851, and the Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973 ("PAIR"), 29 U.S.C. § 794e. All other computation of time requirements shall comply with the PIA and the P&A Acts 42 C.F.R. 51.2; 45 C.F. R. 1386.19. . The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Ms. Rosa E. Torres (Disability Rights Texas), was sent reasonable notice of this setting and agrees to this Agreed Judgment as evidenced by the Intervener's signature below and of the parties' agreement that Parkland may withhold certain information and may release certain information to the requestor due to its specific statutory nature.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

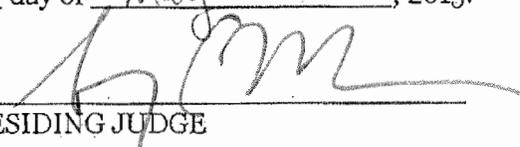
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The parties have agreed that in accordance with the PIA and under the facts presented, specifically the information at issue which includes the records of a specific identified patient at Parkland, from January 1, 2010 through August 8, 2011, Parkland may withhold the attorney-client privileged information marked and the information identified to be withheld in the Attorney General's opinion OR2011-16274 on November 7, 2011. Due to the nature of the requestor, the state identified entity with special rights of access, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act ("PADD Act), 42 U.S.C. §15041, et seq.; the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI Act"), 42 U.S.C. §10801, et seq.; and the Protection and

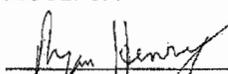
Advocacy for Individual Rights Act, ("PAIR Act), and 29 U.S.C. §794e, et seq., Parkland will release the remaining responsive information to the requestor.

2. Each party will bear their own costs and attorney fees related to this litigation;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims between Parkland, Intervenor, and the Attorney General and is a final judgment.

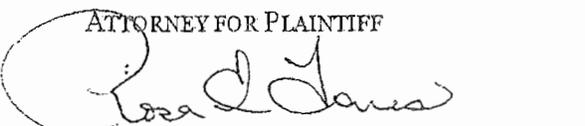
SIGNED the 23rd day of May, 2013.


PRESIDING JUDGE

AGREED:

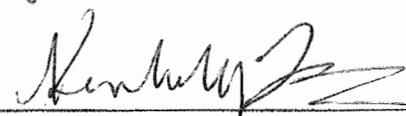

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ATTORNEY FOR INTERVENOR

Agreed Final Judgment
Cause No. D-1-GN-11-003556


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