



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2011

Mr. Ryan S. Henry
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2011-18765

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# 439749.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System ("Parkland"), which you represent, received a request for sixteen categories of information pertaining to a named individual. You state Parkland does not possess information responsive to several categories of the request. We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You claim a portion of the submitted information is excepted from disclosure under section 552.102 of the Government Code. You also believe release of the information may implicate the interests of the named individual. Accordingly, you state you have notified the named individual of the request and the individual's right to submit arguments to this office. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

We first note Parkland has redacted information from the submitted information, presumably pursuant to section 552.024(c) of the Government Code¹ and pursuant to Open Records Decision No. 684.² However, you have also redacted the former city, county, and state in which the named individual previously lived, as well as the named individual's date of birth. You do not assert, nor does our review of the records indicate, you have been authorized to withhold that information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, Parkland should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

We note a portion of the submitted information is subject to section 552.101 of the Government Code.³ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as the federal Fair Credit Reporting Act (the "FCRA"), 15 U.S.C. § 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See* 15 U.S.C. § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining "person" and "consumer report"). Section 1681b further provides that "[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective

¹Section 552.024(c) of the Government Code authorizes a governmental body to redact under section 552.117(a)(1), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee who properly elected to keep this information confidential. *See Gov't Code* § 552.024(c); *Gov't Code* § 552.117(a).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including: direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; W-2 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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

user of the report through a general or specific certification.” *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). Upon review, we find the consumer report furnished to Parkland by a consumer agency, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with the FCRA.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts*, 2010 WL 4910163. Upon review, we find the information you have marked must be withheld under section 552.102(a) of the Government Code.

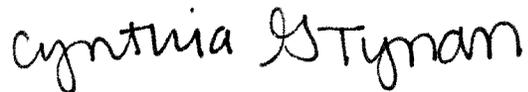
We note some of the remaining information is subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. You inform us that the employee whose information is at issue elected to withhold his personal information prior to Parkland’s receipt of the request. Therefore, Parkland must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code

In summary, Parkland must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FCRA, the information it has marked under section 552.102 of the Government Code, and the information we have marked under section 552.117 of the Government Code. 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,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, flowing style.

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/ag

Ref: ID# 439749

Enc. Submitted documents

c: Requestor
(w/o enclosures)