KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.

ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 21, 2011

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Ryan S. Henry
Denton, Navarro, Rocha & Bernal
2500 W. William Cannon, Suite 609
Austin, Texas 78745

OR2011-18844

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# 439890.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received two requests from the same requestor for any report or correspondence generated by district staff pertaining to suspected or known sexual abuse of hospital patients by district staff or other patients since 2006. You inform us the district will withhold the personal information of an employee subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code.[1] You also state you will withhold certain information pursuant to Open Records Decision No. 684 (2009).[2] You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. We have

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[1]Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Gov't Code § 552.117. Section 552.024(c) of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

[2]Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

considered the exceptions you claim and reviewed the submitted representative sample of information.[3]

Initially, we note the requestor specifically excludes any personally identifying information related to victims in the requested information. Thus, any personally identifying information related to victims in the submitted information is not responsive to the instant request. Further, we note some of the remaining submitted information, which we have marked, is not responsive because it was created after the date the district received the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release that information in response to the request.

Next, you inform us the responsive information on pages 103 through 107 was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2011-09901 (2011). You further inform us some of the responsive information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2011-18041 (2011). In Open Records Letter No. 2011-09901, we determined, in part, with the exception of basic information, the district may withhold some of the submitted information under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2011-18041, we determined, in part, that the district must withhold the information we indicated under section 552.150 of the Government Code but must release the remaining information. We have no indication the law, facts, and circumstances on which these prior rulings were based have changed. Accordingly, the district may rely on Open Records Letter No. 2011-09901 as a previous determination and withhold or release the responsive information on pages 103 through 107 in accordance with this ruling. Further, to the extent the remaining responsive information is identical to the information previously requested and ruled upon by this office, the district must continue to rely on Open Records Letter No. 2011-18041 as a previous determination and withhold or release the identical information in accordance with this ruling. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the remaining responsive information is not encompassed by Open Records Letter No. 2011-18041, we will address the raised exceptions.

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[3]We assume the "representative sample" of information 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.

You indicate the responsive information on pages 144 through 157 consists of records made confidential by the regulations found at part 603 of title 20 of the Code of Federal Regulations. 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. This section encompasses information protected by other statutes. This office has determined that the regulations found at part 603 of title 20 of the Code of Federal Regulations send a clear message that "claim information" in the files of a state unemployment compensation agency is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). You do not demonstrate how these provisions are applicable to the district. Thus, the responsive information on pages 144 through 157 may not be withheld under section 552.101 in conjunction with sections 603.1 *et seq.* of title 20 of the Code of Federal Regulations.

Section 552.101 of the Government Code also encompasses section 161.032 of the Health and Safety Code, which provides, in part:

> (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.
>
> . . .
>
> (c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].
>
> . . .
>
> (f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). For purposes of section 161.032, a "medical committee" includes any committee, including a joint committee, of a hospital, medical organization, or hospital district. *Id.* § 161.031(a)(1), (2), (6). Section 161.0315 provides in relevant part that "[t]he governing body of a hospital, medical organization, [or] hospital district . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]" *Id.* § 161.0315(a).

The precise scope of section 161.032 has been the subject of a number of judicial decisions. *See, e.g., Memorial Hosp.-The Woodlands v. McCown, 927 S.W.2d 1 (Tex. 1996); Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish that "documents generated by the committee in order to conduct open and thorough review" are confidential. This protection extends "to documents that have been prepared by or at the direction of the committee for committee purposes," but does not extend to documents "gratuitously submitted to a committee" or "created without committee impetus and purpose." *See Jordan*, 701 S.W.2d at 647-48; *see* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health and Safety Code § 161.032). Section 161.032 does not make confidential "records made or maintained in the regular course of business by a . . . university medical center or health science center[.]" Health & Safety Code § 161.032(f); *see McCown*, 927 S.W.2d at 10 (stating that reference to statutory predecessor to Occ. Code § 160.007 in Health and Safety Code § 161.032 is clear signal that records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business). The phrase "records made or maintained in the regular course of business" has been construed to mean records that are neither created nor obtained in connection with a medical committee's deliberative proceedings. *See McCown*, 927 S.W.2d at 9-10.

You inform us the district's Board of Managers (the "board") is appointed by the Dallas County Commissioners Court with the responsibility of managing, controlling, and administering the district. You state in furtherance of this duty, the board maintains overall responsibility for the implementation and maintenance of the Performance Improvement Plan (the "PIP"). Further you state that, under the PIP, the board provides authority to medical staff to establish and support medical committees to carry out quality and performance improvement activities system-wide. You state the Patient Safety and Risk Department (the "PSRD") was organized under this structure and carries out the functions of this part of the board's duties. Further, you state the PSRD gathers and analyzes information in support of the district's Quality Improvement Committee (the "QIC"), whose actions in response to this information results in the implementation of steps necessary to improve the quality of care at all the district's facilities. Upon review, we agree the QIC is a medical committee for the purposes of section 161.032 of the Health and Safety Code.

You indicate the responsive information on pages 2 through 102, 108 through 143, and 158 through 161 consist of "reports and supporting information, such as notes, e-mails, and other documentation" created and gathered by the PSRD for analysis and review by and at the direction of the QIC. You also state these records "reflect the deliberative process of identifying incidents involving patient care, evaluating their causes and severity, and making recommendations on how to remedy the situation and reduce the likelihood of recurrence." Upon review, we agree the responsive information on pages 2 through 37, 39 through 49, 68 through 71, 73 through 93, 97 through 102, 108 through 136, 139 through 143, and 158 through 161 consists of committee records that the district must withhold under section 552.101 of the Government Code in conjunction with section 161.032 of the Heath

and Safety Code.[4] However, we note the responsive information on pages 38, 58 through 67, 72, and 137 through 138 consist of law enforcement records held by the district's police department. Because these pages consist of law enforcement records in the possession of a law enforcement agency, we find you have failed to establish this information consists of records of a medical committee. Further, you inform us the responsive information on pages 50 through 57 and 94 through 96 consist of medical records of patients treated by the district. You have failed to demonstrate how this information was not created in the regular course of business. *See Memorial Hosp.—The Woodlands*, 927 S.W.2d at 10 (regular course of business means "records kept in connection with the treatment of . . . individual patients as well as the business and administrative files and papers apart from committee deliberations" and privilege does not prevent discovery of material presented to hospital committee if otherwise available and "offered or proved by means apart from the record of the committee." (quoting *Texarkana Memorial Hosp.*, 551 S.W.2d at 35-6)). Therefore, we conclude you have not established the responsive information on pages 38; 50 through 67; 72; 94 through 96; and 137 through 138 are confidential under section 161.032 and the district may not withhold this information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in relevant part:

> (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open

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[4]As our ruling is dispositive, we need not address your other arguments against disclosure of this information.

Records Decision No. 546 (1990). Upon review, we find that the responsive information on pages 50 through 57 and 94 through 96 consist of medical records that may only be released in accordance with the MPA.[5]

Section 552.101 encompasses information protected by other statutes, such as section 181.006 of the Health & Safety Code. Section 181.006 states that "for a covered entity that is a governmental unit, an individual's protected health information:

> (1) includes any information that reflects that an individual received health care from the covered entity; and
>
> (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines "[c]overed entity," in part, as "any person who:

> (A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]"

Id. § 181.001(b)(2). You inform us the district operates a hospital that maintains health information for the individuals it serves, including information showing that individuals received medical care from the district. You assert the information collected, used, and stored by district consists of protected health information. Thus, you claim the district is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether the district is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether the district engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states that, "[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards ["HIPAA"]." *Id.* § 181.001(a). Accordingly, as chapter 181 does not define "protected health information," we turn to HIPAA's definition of the term. HIPAA defines "protected health information" as individually identifiable health information that is transmitted or maintained in electronic

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[5]As we are able to make this determination, we need not address your other arguments against disclosure of this information.

media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines "individually identifiable health information" as information that is a subset of health information, including demographic information collected from an individual, and:

> (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
>
> (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
>
> > (i) That identifies the individual; or
> >
> > (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Id. Further, "health care" is defined as "care, services, or supplies related to the health of an individual." *Id.* The remaining responsive information consists of records of a former district employee's claim for unemployment benefits and records of the district's police department. You assert this information relates to the provision of health care to individuals. Upon review, however, we find you have failed to demonstrate the former employee's unemployment records contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Accordingly, we find none of this information consists of protected health information, and it may not be withheld under section 552.101 of the Government Code on the basis of section 181.006. Further, the remaining information at issue consists of records of the district's police department. You have not demonstrated how the district's police department, a law enforcement agency, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Therefore, none of the district's police department's records may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 576.005, which provides that "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." Health & Safety Code § 576.005. Upon review, we find you have failed to demonstrate how any of the remaining responsive information constitutes a record of a mental health facility that is subject to section 576.005 of the Health and Safety Code. Therefore, none of the remaining responsive information may be withheld under section 552.101 of the Government Code on this basis.

You also contend the remaining responsive information is confidential under section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 611.002, which is applicable to mental health records and provides in pertinent part:

> (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
>
> (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Id. § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). Upon review, we find none of the remaining responsive information consists of mental health records. Accordingly, the district may not withhold any of this information under section 552.101 of the Government Code on the basis of section 611.002(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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. *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. *Id.* at 681-82. The type 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, however, we find you have failed to demonstrate that any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the responsive information on pages 137 and 138 relate to a criminal investigation by the district's police department. You further explain the district police department's investigation is concluded and did not result in a conviction or a deferred adjudication.

Based on these representations and our review, we find the district may withhold the responsive information on pages 137 and 138 under section 552.108(a)(2) of the Government Code.

As previously noted, section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual at issue in the remaining responsive information timely requested confidentiality under section 552.024, the district must withhold his information, which we have marked, under section 552.117(a)(1). Conversely, if this individual did not make a timely election under section 552.024, the district may not withhold this information under section 552.117(a)(1).

In summary, the district may continue to rely on Open Records Letter No. 2011-09901 as a previous determination and withhold or release the responsive information on pages 103 through 107 in accordance with that ruling. Further, to the extent the remaining responsive information is identical to the information previously requested and ruled upon by this office, the district must continue to rely on Open Records Letter No. 2011-18041 as a previous determination and withhold or release the identical information in accordance with this ruling. The district must withhold the responsive information on pages 2 through 37; 39 through 49; 68 through 71; 73 through 93; 97 through 102; 108 through 136; 139 through 143; and 158 through 161 under section 552.101 of the Government Code in conjunction with section 161.032 of the Heath and Safety Code. The responsive information on pages 50 through 57 and 94 through 96 consist of medical records that may only be released in accordance with the MPA. The district may withhold the responsive information on pages 137 and 138 under section 552.108(a)(2) of the Government Code. If the individual at issue in the remaining responsive information timely requested confidentiality under section 552.024 of the Government Code, the district must withhold his information, which we have marked, under section 552.117(a)(1) of the Government Code. The district must release the remaining responsive information.

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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 439890

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Filed in The District Court
of Travis County, Texas
MR
JUN 28 2016
At 1:51 p M.
Velva L. Price, District Clerk

Cause No. D-1-GN-11-003959

DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND HEALTH & HOSPITAL SYSTEM, *Plaintiff*,	§	IN THE DISTRICT COURT OF
	§	126th JUDICIAL DISTRICT
v.	§	
THE HON. GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, *Defendant*.	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Dallas County Hospital District d/b/a Parkland Health and Hospital System (Parkland), sought to withhold certain information. All matters in controversy between Plaintiff, Parkland, and Defendant, Ken Paxton[1], Attorney General of Texas (Attorney General), have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Moffeit, on June 7, 2016, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that Parkland will withhold the designated portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this motion.

[1] Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.

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The requestor has not filed a motion to intervene.

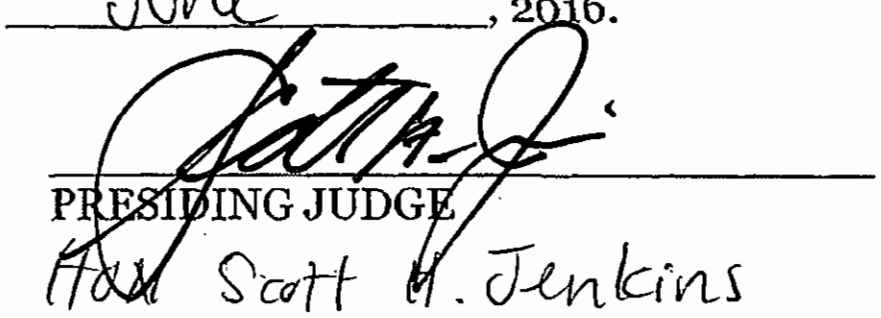
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, specifically the APOWW reports in which no arrests occurred, are excepted from disclosure pursuant to Tex. Gov't Code § 552.108(a)(2), as these reports have all been determined to be records made by a law enforcement official, none of which have resulted in convictions or deferred adjudications. Parkland may also redact information regarding the patient's identity in those APOWW reports because the patients are neither arrestees nor complainants, and therefore information identifying them does not constitute basic information subject to section 552.108(c). Basic information must be released to the requestor in accordance with the guidelines for law enforcement reports not resulting in an arrest;
2. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, specifically the APOWW report in which an arrest did occur, will be released with a driver's license redacted pursuant to Tex. Gov't Code § 552.130 and a social security number redacted pursuant to Tex. Gov't Code § 552.147. Additionally, the victim/complainant's personal identifying information and the arrestee's date of birth will be redacted pursuant to Tex. Gov't Code § 552.101 in conjunction with common-law privacy;

3. Parkland and the Attorney General agree that the two page memo at issue is a medical record and will be withheld pursuant Tex. Gov't Code § 552.101 in conjunction with Tex. Occ. Code § 159.002(b);
4. Parkland and the Attorney General agree that the two page report at issue is a Group One report and is confidential under 15 U.S.C. § 1681.
5. All court cost and attorney fees are taxed against the parties incurring the same;
6. All relief not expressly granted is denied; and
7. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Parkland and the Attorney General and is a final judgment.

SIGNED the 28 day of June, 2016.



PRESIDING JUDGE
Hon Scott H. Jenkins

AGREED:

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ATTORNEY FOR PLAINTIFF DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND HEALTH & HOSPITAL SYSTEM

A

Cause No. D-1-GN-11-003959

DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND HEALTH & HOSPITAL SYSTEM, *Plaintiff,*	§	IN THE DISTRICT COURT OF
	§	126th JUDICIAL DISTRICT
v.	§	
THE HON. GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the Dallas County Hospital District d/b/a Parkland Health and Hospital System (Parkland) and Ken Paxton[1], Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

A request was made under the Public Information Act (PIA) for information from Parkland pertaining to sexual abuse cases. Included in the responsive information were reports of apprehension of peace officers without a warrant, also known as APOWW reports, a memo between nurses, and a report.

In Letter Ruling OR2011-18844, the Open Records Division of the Attorney General (ORD) allowed some of the responsive information to be withheld while requiring release of some of the information. The Attorney General determined that basic information should be released from the APOWW reports.

[1] Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.

After this lawsuit was filed, Parkland submitted information and briefing to the Attorney General establishing that the identities of the subjects of the APPOW reports are generally excepted from disclosure under Texas Government Code section 552.108, with one exception, because the subjects of the report were not arrested as a result of the incidents detailed in the reports. Parkland also submitted briefing that a two-page memo qualifies as a medical record, as well as briefing showing that a report is confidential under federal law. The Attorney General has reviewed Parkland's request and agrees to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, specifically the APOWW reports in which no arrests occurred, are excepted from disclosure pursuant to Tex. Gov't Code § 552.108(a)(2), as these reports have all been determined to be records made by a law enforcement official, none of which have resulted in convictions or deferred adjudications. Parkland may also redact information regarding the patient's identity in those APOWW reports because the patients are neither arrestees nor complainants, and therefore information identifying them does not constitute basic information subject to section 552.108(c). Basic

information must be released to the requestor in accordance with the guidelines for law enforcement reports not resulting in an arrest.

2. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, specifically the APOWW report in which an arrest did occur, will be released with a driver's license redacted pursuant to Tex. Gov't Code § 552.130 and a social security number redacted pursuant to Tex. Gov't Code § 552.147. Additionally, the victim/complainant's personal identifying information and the arrestee's date of birth will be redacted pursuant to Tex. Gov't Code § 552.101 in conjunction with common-law privacy.

3. Parkland and the Attorney General agree that the two-page memo at issue is a medical record and will be withheld pursuant Tex. Gov't Code § 552.101 in conjunction with Tex. Occ. Code § 159.002(b).

4. Parkland and the Attorney General agree that the two-page report at issue is a Group One report and is confidential under 15 U.S.C. § 1681.

5. Parkland and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days' prior notice to the requestor.

6. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest Parkland's right to withhold the information.

7. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

8. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

9. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

10. Parkland warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Parkland has against the Attorney General arising out of the matters described in this Agreement.

11. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against Parkland arising out of the matters described in this Agreement.

12. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

DALLAS COUNTY HOSPITAL SYSTEM, D/B/A PARKLAND HEALTH AND HOSPITAL SYSTEM.

By: _____
name: Ryan Henry
firm: Law Offices of Ryan Henry, PLLC

Date: 6/6/16

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By: _____
name: Kimberly Fuchs
title: Assistant Attorney General, Administrative Law Division

Date: 6/7/16