



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 28, 2011

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

Ms. Jennafer G. Tallant
For Parkland Health and Hospital System
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2011-19073

Dear Ms. Tallant:

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# 440863.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for fifteen categories of information from the personnel file of a named individual. You state the district will release some of the requested information upon payment of charges. You further state the district has no information responsive to portions of the request.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Additionally, you state the district has notified the named individual of her right to submit comments to this office why some of the submitted information should not be released.² See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

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 information protected by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 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.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find you have not demonstrated how any portion of the information at issue consists of a mental health record for purposes of chapter 611 of the Health and Safety Code. Accordingly, the district may not withhold any portion of the information at issue under section 552.101 of the Government Code on that basis.

You also argue some of the submitted information is made confidential by section 576.005 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 576.005, which provides, “[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.” *Id.* § 576.005. Upon review, we find you have failed to demonstrate how any portion of the information at issue is subject to section 576.005 of the Health and Safety Code. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111

(4th Cir. 1993). Thus, the submitted W-4 forms, which we have marked, constitute tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code. You have not demonstrated how any portion of the remaining information constitutes tax return information for purposes of section 6103(a) of title 26 of the United States Code, and no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we have marked, is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found an individual’s criminal history when compiled by a governmental body may be protected under common-law privacy. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Upon review, we find portions of the submitted information, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Thus, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how any portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest, or the information does not identify any individual whose privacy rights would be implicated. Accordingly, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked a date of birth of a public employee that must be withheld under section 552.102(a) of the Government Code. Upon review, however, we find no portion of the remaining information is subject to section 552.102(a), and the district may not withhold any of the remaining information on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, 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 of the Government Code.³ Gov't Code § 552.117(a)(1). We note section 552.117(a)(1) is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. 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 be withheld under section 552.117(a)(1) only 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose personal information is at issue timely requested confidentiality under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). Conversely, to the extent the individual did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).⁴

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130). Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the district must withhold (1) the marked W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States

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

⁴Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Code; (2) the marked I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (3) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the information we marked under section 552.102(a) of the Government Code; (5) the information we have marked under section 552.117(a)(1) of the Government Code, to the extent the individual whose personal information is at issue timely requested confidentiality under section 552.024 of the Government Code; and (6) the motor vehicle record information we marked under section 552.130 of the Government Code.⁵ 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 440863

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; Form I-9 and attachments under section 552.101 of the Government Code in conjunction with 8 U.S.C. § 1324a; and W-4 forms under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a), without the necessity of requesting an attorney general decision.

OCT 18 2016

MR

At 8:37 A.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-12-000225

DALLAS COUNTY HOSPITAL
DISTRICT d/b/a PARKLAND HEALTH
AND HOSPITAL SYSTEM
Plaintiff,

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

353rd JUDICIAL DISTRICT

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant.

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code Ch. 552, in which Plaintiff Dallas County Hospital District d/b/a Parkland Health and Hospital System (Parkland) challenged Attorney General Open Records Letter Rulings OR2011-19073, OR2011-19154, OR2011-19163, OR2011-19210, OR2011-19240, OR2012-00173, OR2012-00707, and OR2012-00803. All matters in controversy arising out of this lawsuit have been resolved, and the Parties agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code § 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after receiving notice of the proposed settlement. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice to the requestors on 9/26/16, providing reasonable notice of this setting. The requestors were informed of the Parties' agreement that Parkland must withhold portions of the information at issue in this suit, as agreed upon between the Parties. The requestors were also informed of the right to intervene in the suit to contest the withholding of the



information. None of the requestors has informed the Parties of an intention to intervene, nor has a plea in intervention been filed.

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 in this suit.

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, the portions of the information at issue consisting of Group One consumer reports and information directly derived from such reports are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the federal Fair Credit Reporting Act (hereinafter, the Excepted Information);

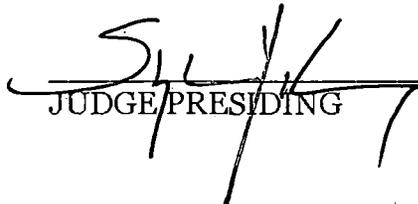
2. Parkland must withhold the Excepted Information described in Paragraph 1 of this order, as well as those portions of the information at issue found to be excepted from disclosure by Open Records Letter Rulings OR2011-19073, OR2011-19154, OR2011-19163, OR2011-19210, OR2011-19240, OR2012-00173, OR2012-00707, and OR2012-00803, and must release the remaining information at issue to the requestor;

3. All court costs and attorney fees are taxed against the Parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Parkland and the Attorney General in this cause and is a final judgment.

SIGNED this 18 day of October, 2016.



JUDGE PRESIDING

AGREED:



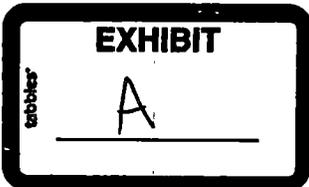
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HOSPITAL DISTRICT D/B/A PARKLAND
HEALTH AND HOSPITAL SYSTEM



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ATTORNEY FOR DEFENDANT KEN PAXTON,
ATTORNEY GENERAL OF TEXAS



CAUSE NO. D-1-GN-12-000225

DALLAS COUNTY HOSPITAL	§	IN THE DISTRICT COURT OF
DISTRICT d/b/a PARKLAND HEALTH	§	
AND HOSPITAL SYSTEM	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	353rd JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY	§	
GENERAL OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Dallas County Hospital District d/b/a Parkland Health and Hospital System (Parkland) and Defendant Ken Paxton, Attorney General of Texas¹ (the Attorney General). This Agreement is made on the terms set forth below.

BACKGROUND

Parkland received eight related requests under the Public Information Act (the PIA) for numerous categories of information pertaining to several named Parkland employees and information relating to a specified incident. In each instance Parkland requested an open records ruling from the Attorney General pursuant to the PIA, Tex. Gov't Code § 552.301, asserting portions of the requested information were excepted from required public disclosure. The Attorney General issued eight open records letter rulings in response to Parkland's requests, numbered: OR2011-19073, OR2011-19154, OR2011-19163, OR2011-19210, OR2011-19240, OR2012-00173, OR2012-00707, and OR2012-00803. The rulings found portions of the information Parkland sought to withhold were

¹ Greg Abbott was named defendant in the cause in his official capacity as Texas Attorney General. Ken Paxton became Texas Attorney General on January 5, 2015, and is now the appropriate defendant in this cause.

excepted from disclosure, but concluded that the remaining requested information was not excepted from required disclosure and must be released.

Parkland disputed the rulings and filed a single lawsuit, styled Cause No. D-1-GN-12-000225, *Dallas County Hospital District d/b/a Parkland Health and Hospital System v. Greg Abbott, Attorney General of Texas*, In the 53rd District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. Those portions of the requested information that Parkland sought to withhold from public disclosure but that the Attorney General determined must be released comprise the “information at issue” in this lawsuit (information at issue). Parkland provided notice of this lawsuit to the requestors as required by Tex. Gov’t Code § 552.325(b). Tex. Gov’t Code § 552.325(c) allows the Parties to enter into a settlement under which portions of the information at issue 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. The portion of the information at issue consisting of Group One consumer reports and information directly derived from such reports is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the federal Fair Credit Reporting Act (the Excepted Information).

2. Parkland must withhold the Excepted Information as described in Paragraph 1 of this Agreement, as well as the information found to be excepted from disclosure by Open Records Letter Rulings OR2011-19073, OR2011-19154, OR2011-19163, OR2011-19210, OR2011-19240, OR2012-00173, OR2012-00707, and OR2012-00803.

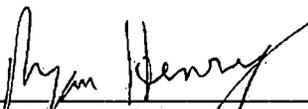
3. The remaining information must be released to the requestor.
4. Parkland and the Attorney General agree to the entry of an Agreed Final Judgment, the form of which has been approved by each Party's attorney. The Agreed Final Judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to the requestors.
5. Pursuant to Tex. Gov't Code § 552.325(c), the Attorney General agrees to notify the requestors of the proposed settlement and of each requestor's right to intervene in this lawsuit to contest the withholding of the Excepted Information, as described in Paragraph 1 of this Agreement.
6. Should the requestor intervene in this lawsuit, a final judgment entered in this lawsuit will prevail over this Agreement, to the extent of any conflict.
7. Each Party to this Agreement will bear its own costs, including attorneys' fees, relating to this litigation.
8. 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.
9. 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 the Parties have against each other arising out of the matters described in this Agreement.
10. 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 the Parties have against each other arising out of the matters described in this Agreement.

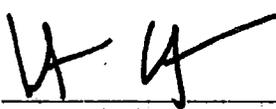
11. This Agreement shall become effective, and be deemed to have been executed, on the date upon which the last of the undersigned Parties signs this Agreement.

DALLAS COUNTY HOSPITAL
DISTRICT d/b/a PARKLAND HEALTH
AND HOSPITAL SYSTEM

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS



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Date: September 21, 2016

Date: September 22, 2016