



**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 29, 2011

Ms. Jennafer G. Tallant  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

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

OR2011-19163

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# 440865.

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 pertaining to a named former employee. You state you do not possess some of the requested information.<sup>1</sup> You state you will redact certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim portions of the submitted information are excepted

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *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), 555 at 1 (1990), 362 at 2 (1983).

<sup>2</sup>Open Records Decision No. 684 (2009) is 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-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; and an e-mail address of a member of the public under section 552.137 of the Government Code. You also seek to withhold bank account, checking, and routing numbers under ORD 684. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See Gov't Code* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

from disclosure under sections 552.102 and 552.117 of the Government Code.<sup>3</sup> In addition, you state you notified the named individual of the request and of her right to submit arguments to this office as to why the information at issue should not be released. *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.

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 the doctrine of common-law 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.<sup>4</sup> *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. *Id.* at 681-82. We note this office has found the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). However, this office has found personal financial information not related to a financial transaction between an individual and a governmental body is intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We find the personal financial information in the submitted information, which we have marked, is highly intimate or embarrassing and a matter of no legitimate public interest and must be withheld under section 552.101 of the Government Code 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

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<sup>3</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 remaining information, we find the district must withhold the information we have marked in the remaining information under section 552.102(a) of the Government Code.<sup>5</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone numbers, social security number, family member information, and emergency contact information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The district may only withhold the former employee’s personal information under section 552.117(a)(1) if she elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the former employee whose personal information is at issue made a timely election under section 552.024, the district must withhold her personal information, which we have marked, under section 552.117(a)(1). If the former employee did not make a timely election under section 552.024, her personal information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked under section 552.102(a) of the Government Code. If the former employee whose personal information is at issue made a timely election under section 552.024, the district must withhold her personal information, which we have marked, under section 552.117(a)(1) 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.

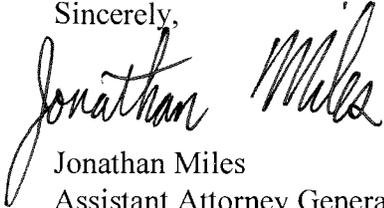
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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

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 "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/agn

Ref: ID# 440865

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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,*

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§

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);

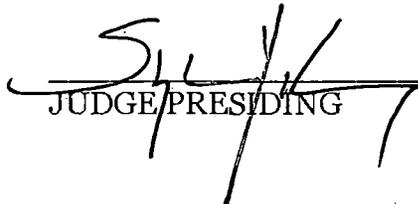
2. Parkland must withhold the Excepted Information described in Paragraph 1 of this order, as well as those portions of the information at issue found to be excepted from disclosure by Open Records Letter Rulings OR2011-19073, OR2011-19154, OR2011-19163, OR2011-19210, OR2011-19240, OR2012-00173, OR2012-00707,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

  
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JUDGE PRESIDING

AGREED:

  
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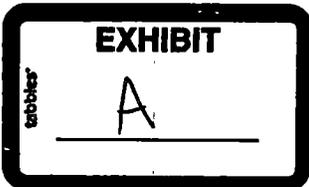
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ATTORNEY FOR PLAINTIFF DALLAS COUNTY  
HOSPITAL DISTRICT D/B/A PARKLAND  
HEALTH AND HOSPITAL SYSTEM

  
\_\_\_\_\_

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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 Texas<sup>1</sup> (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

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<sup>1</sup> 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.

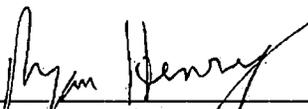
3. The remaining information must be released to the requestor.
4. Parkland and the Attorney General agree to the entry of an Agreed Final Judgment, the form of which has been approved by each Party's attorney. The Agreed Final Judgment will be presented to the Court for approval, on the uncontested 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

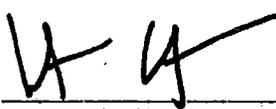
representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the Parties have against each other arising out of the matters described in this Agreement.

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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matthew.entsminger@texasattorneygeneral.gov

Date: September 21, 2016

Date: September 22, 2016