



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

January 4, 2012

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

Ms. Erin A. Higginbotham
For Dallas County Hospital District
Denton, Navarro, Rocha & Bernal
2500 W. William Cannon, Suite 609
Austin, Texas 78745

OR2012-00173

Dear Ms. Higginbotham:

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# 441359.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for all records related to any of five named psychiatric technicians created or received during a specified time period. You state you will redact some information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.107, 552.108, and 552.150 of the Government Code. We have

¹The previous determination issued in Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended sections 552.130 and 552.136 of the Government Code to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) and section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code §§ 552.130(c), .136(c). Thus, if a governmental body redacts such information, it must notify the requestor in accordance with sections 552.130(e) and 552.136(e). *See id.* §§ 552.130(d), .136(e). Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, and information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor excludes from his request patients' medical records, and employees' social security numbers, family member information, birth dates, home addresses, and personal banking information. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release non-responsive information in response to the request.

Next, you inform us some of the submitted information, which you have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-19240 (2011). In that decision we ruled, with the exception of basic information, the district may withhold the information we marked under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, or circumstances on which the prior ruling was based have changed, the district must continue to rely on this ruling as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that prior ruling. *See* 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).

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. Section 160.007 of the Occupations Code provides, in relevant part:

(a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

Occ. Code § 160.007(a). A medical peer review committee is "the governing board of a health care entity, . . . that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

of medical and health care services[.]” *Id.* § 151.002(a)(8). However, the governing body of a hospital district acts as a medical peer review committee only

(i) in relation to the governing body’s evaluation of the competence of a physician or the quality of medical and health care services provided by the public hospital, hospital authority, or hospital district; and

(ii) to the extent that the evaluation under Subparagraph (i) involves discussions or records that specifically or necessarily identify an individual patient or physician.

Id. § 151.002(a)(8)(B); *see also* Attorney General Opinion JC-0108 (1999) (actions of governing body of hospital district may qualify for medical peer review privilege, but only to extent specific patient or physician is identified). Section 161.032 of the Health and Safety Code addresses the broader category of medical committees, and provides in relevant 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 this confidentiality provision, a medical committee “includes any committee, including a joint committee, of . . . a hospital [or] a hospital district [.]” *Id.* § 161.031(a). Section 161.0315 provides “[t]he governing body of a hospital, medical organization, university medical school or health science center [or] hospital district . . . may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by section 161.031, to evaluate medical and health care services[.]” *Id.* § 161.0315(a).

You argue the information you have marked constitutes the privileged records of a medical peer review committee or medical committee under section 160.007 of the Occupations Code and section 161.032 of the Health and Safety Code. 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 one of the board's responsibilities is "[t]o establish, support, and oversee a system-wide performance improvement program." You inform us that, in furtherance of this duty, the board has created a procedure for responding to patient complaints and reviews these complaints in its capacity as the ultimate quality assurance committee. You state, in its capacity as a quality assurance committee, the board investigates incidents, takes steps to remedy the incidents, and recommends necessary steps to prevent incidents from recurring. You explain the information at issue is generated by the board "in the course of the board's investigation and fact-gathering function in furtherance of its overall quality assurance duties." Further, we note the information at issue specifically identifies individual patients. In this instance, based on your arguments and our review, you have established the board is a medical peer review committee as defined by section 151.002(a)(8)(B) of the Health and Safety Code.

You explain the information at issue consists of Patient Safety Net reports, notes, and records related to the board's investigations. You state the information at issue was not created in the ordinary course of business. Based on your representations and our review, we find the district has established the information you have marked consists of confidential records of a medical committee under section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code. Therefore, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code.³

You argue some of the remaining information is excepted from public disclosure under section 576.005 of the Health and Safety Code. 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." *Id.* § 576.005. Upon review, we conclude the information we have marked consists of records of a mental health facility. Accordingly, we agree the confidentiality provision of section 576.005 applies to this information. You do not indicate any other state law would permit disclosure of this information in this instance. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 576.005 of the Health

³As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure.

and Safety Code.⁴ However, we find you have failed to demonstrate how any of the remaining information is subject to section 576.005 of the Health and Safety Code. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses section 181.006 of the Health & Safety Code. Section 181.006 states that: “[f]or 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].

Id. § 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 the 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

⁴As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

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 information at issue consists of incident reports created by the district’s police department (the “department”). You have not demonstrated how the department, a law enforcement agency, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the department’s information is subject to section 181.006 of the Health and Safety Code. Accordingly, none of the department’s information may be withheld under section 552.101 of the Government Code on that basis.

Next, you contend the remaining 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 information consists of mental health records for purposes of 611.002. 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 Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. The MPA is applicable to medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined 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). Upon review, we find none of the remaining information constitutes medical records for the purposes of the MPA. Thus, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals

to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You contend the information you have marked consists of communications between the district and the district’s attorneys or attorney representatives that were made in furtherance of the rendition of professional legal services to the district. You also state the communications were made in confidence, and that confidentiality has been maintained. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information you have marked. Accordingly, the district may withhold the information you have marked under section 552.107(1) of the Government Code.

You claim some of the remaining information is protected by section 552.108(a)(2) of the Government Code, which provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that the 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to investigations that did not result in convictions or deferred adjudications. Based on these representations and our

review, we agree section 552.108(a)(2) is applicable to the marked department incident reports.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. Thus, with the exception of basic information, the district may withhold the department's incident reports you have marked under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. In addition, 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). This office has found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under common-law right of privacy). Upon review, we find some of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert a portion of the remaining information is excepted from public disclosure under section 552.150 of the Government Code, which provides as follows:

(a) Information in the custody of a hospital district that relates to an employee or officer of the hospital district is excepted from the requirements of Section 552.021 if:

(1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual, such as information that describes or depicts the likeness of the individual, information stating the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks; and

(2) the employee or officer applies in writing to the hospital district's officer for public information to have the information withheld from public disclosure under this section and includes in the application:

(A) a description of the information; and

(B) the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual.

(b) On receiving a written request for information described in an application submitted under Subsection (a)(2), the officer for public information shall:

(1) request a decision from the attorney general in accordance with Section 552.301 regarding withholding the information; and

(2) include a copy of the application submitted under Subsection (a)(2) with the request for the decision.

Gov't Code § 552.150. Section 552.150 provides that information held by a hospital district relating to a hospital district employee or officer is excepted from public disclosure provided (1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual; and (2) the employee or officer makes a written application in accordance with section 552.150(a)(2) to the hospital district's officer for public information to have the information withheld from public disclosure under this section. *Id.* The individual's application must include a description of the information at issue and the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise his or her safety. *Id.*

The district has provided this office with e-mails sent to the district from three employees who generally ask that their information not be publicly disclosed. Upon review we find

none of the individuals has established that release of the information at issue could “reasonably be expected to compromise the safety of the individual.” *See id.* Therefore, the district may not withhold any of the remaining information under section 552.150 of the Government Code.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024.⁵ 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 official or 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. The district must withhold the telephone number we have marked under section 552.117(a)(1) to the extent the employee concerned timely elected confidentiality under section 552.024.

Next, we note some of the remaining information may be subject to section 552.117(a)(2) of the Government Code, which excepts from public disclosure a peace officer’s home address and telephone number, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. *Id.* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal pager numbers, provided the pager service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The district must withhold the pager number we have marked under section 552.117(a)(2) if the pager service is not paid for by the district.

In summary, the district must continue to rely on Open Records Letter No. 2011-19240 as a previous determination and continue to withhold or release any previously ruled upon information in accordance with that prior ruling. The district must withhold under section 552.101 of the Government Code the information you have marked in conjunction with section 161.032 of the Health and Safety Code and section 160.007 of the Occupations Code and the information we have marked under section 576.005 of the Health and Safety Code. The district may withhold the information you have marked under section 552.107(1) of the Government Code. With the exception of basic information, the district may withhold

⁵The 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).

the information you have marked under section 552.108(a)(2) of the Government Code. 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 telephone number we have marked under section 552.117(a)(1) of the Government Code, to the extent the employee concerned timely elected confidentiality under section 552.024. The district must withhold the pager number we have marked under section 552.117(a)(2) of the Government Code if the pager service is not paid for by the district. 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 441359

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,

§
§
§
§
§
§
§
§
§
§

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);

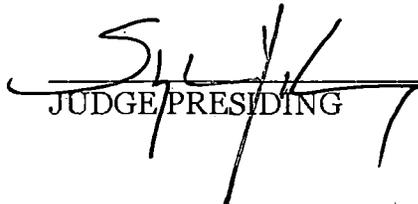
2. Parkland must withhold the Excepted Information described in Paragraph 1 of this order, as well as those portions of the information at issue found to be excepted from disclosure by Open Records Letter Rulings OR2011-19073, OR2011-19154, OR2011-19163, OR2011-19210, OR2011-19240, OR2012-00173, OR2012-00707,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

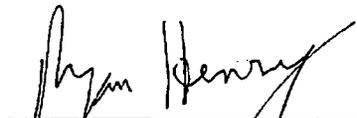
5. This Agreed Final Judgment finally disposes of all claims between Parkland and the Attorney General in this cause and is a final judgment.

SIGNED this 18 day of October, 2016.



JUDGE PRESIDING

AGREED:



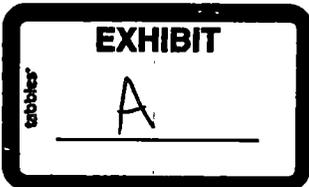
RYAN S. HENRY
State Bar No. 24007347
Law Office of Ryan Henry, PLLC
1380 Pantheon Way, Suite 110
San Antonio, Texas 78232
Telephone: (210) 257-6357
Facsimile: (210) 569-6494
ryan.henry@rshlawfirm.com

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



MATTHEW R. ENTSMINGER
State Bar No. 24059723
Section Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 457-4686
matthew.entsminger@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT KEN PAXTON,
ATTORNEY GENERAL OF TEXAS



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

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

v.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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.

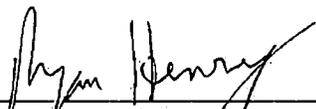
3. The remaining information must be released to the requestor.
4. Parkland and the Attorney General agree to the entry of an Agreed Final Judgment, the form of which has been approved by each Party's attorney. The Agreed Final Judgment will be presented to the Court for approval, on the uncontested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

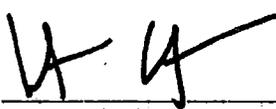
11. This Agreement shall become effective, and be deemed to have been executed, on the date upon which the last of the undersigned Parties signs this Agreement.

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

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS



RYAN S. HENRY
State Bar No. 24007347
Law Office of Ryan Henry, PLLC
1380 Pantheon Way, Suite 110
San Antonio, Texas 78232
Telephone: (210) 257-6357
Facsimile: (210) 569-6494
ryan.henry@rshlawfirm.com



MATTHEW R. ENTSMINGER
State Bar No. 24059723
Section Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 457-4686
matthew.entsminger@texasattorneygeneral.gov

Date: September 21, 2016

Date: September 22, 2016