



**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

March 20, 2012

Mr. Ryan S. Henry  
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.**

OR2012-04065

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# 448060.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for twenty-three categories of information pertaining to a named individual. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> Additionally, you provide documentation showing you have notified the named individual of his right to submit comments to this office why some of the submitted information should not be released.<sup>2</sup> See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>We assume the "representative sample" of records 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 that submitted to this office.

<sup>2</sup>As 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.

Initially, you indicate some of the submitted information, which you have marked, is not responsive to the instant request for information. Upon review, we agree some of the marked information is not responsive to the request because it does not pertain to the named individual or does not relate to any of the twenty-three specified categories of information. We further find portions of the remaining information, which we have marked, are not responsive to the instant request for information because they were created after the district received the request for information. 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 such information in response to this request. We find the remaining information that you claim is non-responsive, which we have marked, is responsive to the request for information because it is part of a completed investigation regarding complaints pertaining to the named individual. Accordingly, we will consider your arguments against disclosure of the responsive information.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code §§ 552.022(a)(1). The responsive information includes completed incident reports, completed evaluations, and a completed investigation that are subject to subsection 552.022(a)(1). The district must release this information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). You seek to withhold the information subject to subsection 552.022(a)(1) under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code. We note section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37* (providing for "confidentiality" of information under specified exceptions); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 565 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to subsection 552.022(a)(1) may not be withheld under section 552.103 of the Government Code. However, information subject to subsection 552.022(a)(1) may be withheld under section 552.108. Further, sections 552.101, 552.130, and 552.137 of the Government Code

make information confidential under the Act or other law.<sup>3</sup> Thus, we will consider the applicability of sections 552.101, 552.108, 552.130, and 552.137 for this information. We will also consider your argument under section 552.103 for the responsive information not subject to section 552.022(a)(1).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state, and have provided documentation from the district's police department demonstrating, incident report numbers 1102534, 1101270, 1101042, 0904502, and 0902861 relate to closed cases that did not result in convictions or deferred adjudications. You further state incident report numbers 1102603, 1101353, 1000307, 071003, 062257, 051920, and 051603 relate to investigations that were concluded without criminal charges being filed. Thus, you state the reports at issue relate to closed cases 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 incident report numbers 1102534, 1101353, 1101270, 1101042, 1000307, 0904502, 0902861, 071003, 062257, 051920, and 051603.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity and description of the complainant and a detailed description of the offense. *See id.* at 3-4. Thus, with the exception of the basic information, the district may withhold incident report numbers 1102603, 1102534, 1101353, 1101270, 1101042, 1000307, 0904502, 0902861, 071003, 062257, 051920, and 051603, which we have marked, under section 552.108(a)(2) of the Government Code.

You claim section 552.103 of the Government Code for portions of the remaining responsive information not subject to section 552.022(a)(1). Section 552.103 provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

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<sup>3</sup>The 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).

state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* This office has found a pending complaint with the Equal Opportunity Employment Commission ("EEOC") indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982), 281 at 1 (1981).

You state, and provide documentation showing, prior to the district's receipt of the instant request, the named individual filed discrimination claims against the district with the EEOC. Based on your arguments and our review of the information at issue, we find the district reasonably anticipated litigation on the date this request was received. You also state the information at issue pertains to the substance of the discrimination claims. Based on your representations and our review, we find the information you have noted is related to the anticipated litigation. Therefore, section 552.103 is generally applicable to the information you have noted that is not subject to section 552.022(a)(1).

We note, however, the opposing party has seen or had access to much of the information at issue. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the

litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5 (1990). Thus, once the opposing party in anticipated litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the information not subject to section 552.022(a)(1) that the opposing party to the litigation has not seen or had access to, and the district may withhold this marked information under section 552.103 of the Government Code.<sup>4</sup> We note the applicability of section 552.103 ends once the related litigation concludes or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). The information the opposing party has seen or had access to may not be withheld under section 552.103, and we will address the applicability of other exceptions to disclosure of this 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.” Gov’t Code § 552.101. Section 552.101 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 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:

(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.

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<sup>4</sup>As our ruling is dispositive with respect to this information, we need not address your remaining argument against disclosure of the information at issue.

(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). 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). Information subject to the MPA includes both medical records and information obtained from those medical records. See Occ. Code §§ 159.002, .004; ORD 598. We have further found when a file is created as a result of a hospital stay, all the documents in the file referring 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 Records Decision No. 546 (1990).

Upon review, we find a portion of the remaining responsive information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the district receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

Section 552.101 also encompasses section 258.102 of the Occupations Code, which provides in pertinent part as follows:

(a) The following information is privileged and may not be disclosed except as provided by this subchapter:

- (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and
- (2) a dental record.

Occ. Code § 258.102(a). A “dental record” means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. See *id.* § 258.101(1). Information that is privileged under chapter 258 of the Occupations Code may be disclosed only under certain specified circumstances. See *id.* § 258.104 (consent to disclosure). A person who receives information that is privileged under section 258.102 of the Occupations Code may disclose that information to another person only to the extent that disclosure is consistent with the purpose for which the information was obtained. See *id.* § 258.108. A portion of the remaining information, which we have marked, consists of a dental record that is confidential pursuant to section 258.102 of the Occupations Code.

Therefore, the district must withhold the marked information under section 552.101 of the Government Code unless it receives consent for release of the information under section 258.104 of the Occupations Code.

Section 552.101 also encompasses section 181.006 of the Health and Safety Code. Section 181.006 states, “[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].

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 indicate the district maintains health care information for the individuals it serves, including information showing an individual received medical care from the district. You indicate 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:

- (1) Except as provided in paragraph (2) of this definition, that is:

- (i) Transmitted by electronic media;
- (ii) Maintained in electronic media; or
- (iii) Transmitted or maintained in any other form or medium.

(2) Protected health information excludes individually identifiable health information in:

- (iii) Employment records held by a covered entity in its role as employer.

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 contains documentation of incidents that occurred during the course of the employment of the named individual. Thus, we find these records consist of employment records of the named individual that are being held by the district in its role as an employer. The information at issue also contains 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. Thus, you have failed to demonstrate how any of these records are confidential under section 181.006 of the Health and Safety Code, and the district may not withhold any of the remaining information you have marked under section 552.101 on that ground.

We note portions of the basic information in incident report numbers 1101270, 1101042, 0902861, 0904502, and 1102534, as well as portions of the remaining information, are confidential under common-law privacy. 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. The type of information considered intimate and 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See Gov't Code § 411.081(b)* (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We further note the public has a legitimate interest in knowing the general details of a crime. *See generally Lowé v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994)); *Houston Chronicle*, 531 S.W.2d 177, 186-187 (public has legitimate interest in details of crime and police efforts to combat crime in community). This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos.* 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common-law privacy), 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress). This office has also 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 financial information relating only to an

individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* ORD 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information you have marked may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978).

You state portions of the remaining information identify persons making complaints to the district regarding certain matters. However, you have not identified, and we are unable to discern, a violation of any criminal or civil statute in any of the reports at issue, nor have you explained whether any violation carries civil or criminal penalties. Further, we note the reporting party listed in several of the reports at issue is a business entity and not a person. The informer's privilege does not protect the identity of a corporation that reports a violation of the law, as a corporation is not an individual. *See Roviato v. United States*, 353 U.S. 53, 59 (1957); Open Records Decision No. 515 at 2 (1988). Thus, we conclude the district has not demonstrated the applicability of the common-law informer's privilege to any portion of

the information at issue, and no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

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 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.*, 354 S.W.3d 336 (Tex. Dec. 3, 2010). Having carefully reviewed the remaining information at issue, we have marked information that must be withheld under section 552.102(a) of the Government Code.

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. *See* Gov’t Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers provided the cellular telephone 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). 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). You state, and provide documentation showing, the employee whose information is at issue timely elected confidentiality for his home address and telephone number, social security number, and family member information. Therefore, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.

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. Accordingly, the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We note the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under

section 552.137 of the Government Code, unless their owner affirmatively consents to their public disclosure.

In summary, with the exception of the basic information, the district may withhold incident report numbers 1102603, 1102534, 1101353, 1101270, 1101042, 1000307, 0904502, 0902861, 071003, 062257, 051920, and 051603, which we have marked, under section 552.108(a)(2) of the Government Code. The district may also withhold the information we marked under section 552.103 of the Government Code. The district must withhold (1) 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; (2) the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, unless the district receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA; (3) the information we marked under section 552.101 of the Government Code in conjunction with section 241.051(d) of the Health and Safety Code; (4) the marked dental record under section 552.101 of the Government Code in conjunction with section 258.102 of the Occupations Code, unless the district receives consent for release of the information under section 258.104 of the Occupations Code; (5) the information we marked, including portions of incident report numbers 1101353, 1101270, 1101042, 1000307, 0902861, 071003, 062257, 051920, and 051603, under section 552.101 of the Government Code in conjunction with common-law privacy; (6) the information we marked under section 552.102(a) of the Government Code; (7) the information we marked under section 552.117(a)(1) of the Government Code, but may withhold the marked cellular telephone number only if a governmental body does not pay for the cellular telephone service; (8) the motor vehicle record information we marked under section 552.130 of the Government Code; and (9) the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless their owner affirmatively consents to their public disclosure.<sup>5</sup> The remaining responsive information must be released.<sup>6</sup>

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.

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<sup>5</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Form I-9 and attachments under section 552.101 of the Government Code in conjunction with 8 U.S.C. § 1324a; a Texas driver's license number under section 552.130 of the Government Code; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>6</sup>We note the information being released contains social security numbers. 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).

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 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/som

Ref: ID# 448060

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

SC FEB 22 2016  
At 1:40 P.M.  
Velva L. Price, District Clerk

Cause No. D-1-GV-12-000339

DALLAS COUNTY HOSPITAL	§	IN THE DISTRICT COURT OF
DISTRICT d/b/a PARKLAND HEALTH	§	
& HOSPITAL SYSTEM,	§	
<i>Plaintiff,</i>	§	
	§	201st JUDICIAL DISTRICT
v.	§	
	§	
THE HON. GREG ABBOTT,	§	
ATTORNEY GENERAL OF TEXAS,	§	
<i>Defendant.</i>	§	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<sup>1</sup>, 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. Brooks Egerton, on Feb. 1, 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

<sup>1</sup> Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.



withholding of this information. A copy of the certified mail receipt is attached to this motion.

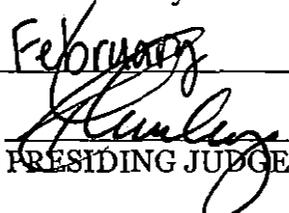
The requestor has not filed a motion to intervene.

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.

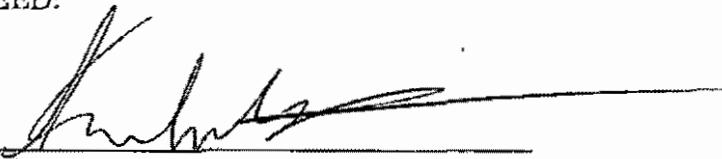
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

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 are excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with common-law privacy. Therefore, Parkland must redact the information marked by the parties, which constitutes information related to medical treatment, contained in the former employee's personnel file. These markings are in addition to redactions required by the letter ruling. Parkland may also redact information regarding the patient's identity in the APOWW reports because, pursuant to Tex. Gov't Code § 552.108(a)(2) and (b)(2), these reports have all been determined to be internal records of the entity, made by a law enforcement official, none have which resulted in convictions or deferred adjudications.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. 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 22 day of February, 2016.

  
\_\_\_\_\_  
PRESIDING JUDGE

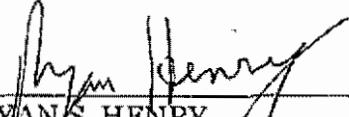
AGREED:



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**ATTORNEY FOR DEFENDANT, KEN PAXTON**



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**ATTORNEY FOR PLAINTIFF, DALLAS COUNTY HOSPITAL DISTRICT D/B/A PARKLAND  
HEALTH & HOSPITAL SYSTEM**

**A**

Cause No. D-1-GV-12-000339

DALLAS COUNTY HOSPITAL	§	IN THE DISTRICT COURT OF
DISTRICT d/b/a PARKLAND HEALTH	§	
& HOSPITAL SYSTEM,	§	
<i>Plaintiff,</i>	§	
	§	201st JUDICIAL DISTRICT
v.	§	
	§	
THE HON. GREG ABBOTT,	§	
ATTORNEY GENERAL OF TEXAS,	§	
<i>Defendant.</i>	§	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<sup>1</sup>, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

**Background**

In January 2012, a request was made under the Public Information Act (PIA) for records related to a specified psychiatric technician who had been previously employed by Parkland. Parkland asked for an Attorney General decision on whether portions of this information could be withheld.

In Letter Ruling OR2012-04065, 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. Parkland released some of the information to the requestor and filed suit challenging the Attorney General's letter ruling with regards to other portions of the information, specifically parts of the former employee's personnel

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<sup>1</sup> Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.

file and reports of apprehension of peace officers without a warrant, also known as APOWW reports.

After this lawsuit was filed, Parkland submitted information and briefing to the Attorney General establishing that some of the information at issue is excepted from disclosure under Texas Government Code section 552.101 in conjunction with common-law privacy and some is excepted under Texas Government Code section 552.108. 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 are excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with common-law privacy. Therefore, Parkland must redact the information marked by the parties, which constitutes information related to medical treatment, contained in the former employee's personnel file. These markings are in addition to redactions required by the letter ruling. Parkland may also redact information regarding the patient's identity in the APOWW reports because, pursuant to Tex. Gov't Code § 552.108(a)(2) and (b)(2), these reports have all been determined to be internal records of the entity, made by a law enforcement official, none of which resulted in convictions or deferred adjudications.

2. 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.

3. 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.

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

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

6. 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.

7. 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.

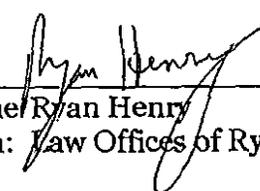
8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and

settlement and release of all claims that the Attorney General has against Parkland arising out of the matters described in this Agreement.

9. 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.

KEN PAXTON, ATTORNEY GENERAL  
OF TEXAS

By:   
Name: Ryan Henry

Firm: Law Offices of Ryan Henry, PLLC

Date: January 26, 2016

By:   
Name: Kimberly Fuchs

Title: Assistant Attorney General,  
Administrative Law Division

Date: Feb 1, 2016