



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2013

Ms. Thao La
Senior Attorney
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2013-16829

Dear Ms. La:

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# 500681 (DCHD Nos. 13-78, 13-79, 13-80, and 13-95).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received four requests from three requestors for specified subpoenas, communications, and information related to a specified executive session of the district's Board of Managers. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the United States Department of Justice (the "DOJ"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the second and fourth requests seek only subpoenas. Thus, the remaining submitted information is not responsive to the second and fourth requests. Accordingly, the district need not release information to the requestors that is not responsive to their requests,

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and this ruling will not address the public availability of the non-responsive information with respect to each request.

Next, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-14151 (2011). In that ruling, we concluded the district may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the DOJ. You inform us the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the district may continue to rely on Open Records Letter No. 2011-14151 as a previous determination and withhold the identical information in accordance with that ruling.² *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). As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

We next note the remaining information includes information in an account, voucher, or contract related to the expenditure of public funds by the district. This information is subject to section 552.022(a)(3) of the Government Code, which provides for the required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body,” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a). Although you raise sections 552.103 and 552.108 of the Government Code for this information, these are discretionary exceptions that may be waived and do not make information confidential under the Act. *See id.* § 552.007; *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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.103), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, the information subject to section 552.022(a)(3), which we have marked, may not be withheld under section 552.103 or section 552.108. As you raise no other exceptions against disclosure, the district must release this marked information.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

²We note the DOJ continues to request the district withhold the information at issue.

Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The DOJ objects to release of the submitted information because its release would interfere with a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, the district may continue to rely on Open Records Letter No. 2011-14151 as a previous determination and withhold the identical information in accordance with that ruling. The district must release the information we have marked pursuant to section 552.022(a)(3) of the Government Code. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 500681

Enc. Submitted documents

c: Three Requestors
(w/o enclosures)

c: Mr. Walt M. Junker
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