



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 3, 2015

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

OR2015-10911

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# 566195 (DCHD# 15-24).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for six categories of information pertaining to persons "captured, restrained, detained, transported and/or treated" pursuant to a Peace Officer Application for Emergency Detention without Warrant for specified time periods. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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

(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:

...

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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.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The information you have marked Exhibit C1b consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The district must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although you raise sections 552.103 and 552.108 of the Government Code for this information, those exceptions are discretionary in nature and do not make information confidential under the Act. *See 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) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district may not withhold any of the information subject to section 552.022 under these exceptions. However, you also raise section 552.101 of the Government Code for the information subject to section 552.022, and section 552.101 protects information made confidential under law for purposes of section 552.022. Accordingly, we will consider the applicability of that exception to the information subject to section 552.022(a)(3). Further, we will consider your arguments for the remaining information not subject to section 552.022.

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, such as section 241.152 of the Health and Safety Code, which states, in relevant part:

(a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines “health care information” as “information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.” *Id.* § 241.151(2). You claim the submitted information consists of medical records maintained by the district related to the history, diagnosis, treatment, or prognosis of identified patients. Upon review, we find some of the submitted information consists of health care information that is confidential under section 241.152 of the Health and Safety Code. Accordingly, the district must withhold the information you have marked Exhibits C1a and C1b under section 552.101 of the Government Code in conjunction with

section 241.152 of the Health and Safety Code.<sup>2</sup> However, we find the information you have marked Exhibit C2 does not relate to the history, diagnosis, treatment, or prognosis of an identified patient; accordingly, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.

Section 552.103 of the Government Code 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 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 to show section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

You inform us, and have provided documentation demonstrating, a lawsuit styled *Nieman v. The Concrete Cowboy Bar*, Cause No. 3:14-CV-3897-M, was pending against the district in the United States District Court for the Northern District of Texas prior to the receipt of this request for information. Therefore, we agree litigation was pending when the district received the request. We also find you have established the information in Exhibit C2 is related to the pending litigation for purposes of section 552.103(a). Therefore, the district may withhold Exhibit C2 under section 552.103(a) of the Government Code.<sup>3</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

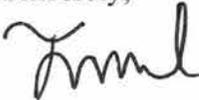
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district must withhold Exhibits C1a and C1b under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code. The district may withhold Exhibit C2 under section 552.103(a) 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 566195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)