



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2015

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

OR2015-12018

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# 567822 (DCHD # 15-26).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") received a request for information pertaining to named individual and a specified incident. You state Parkland has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.137 of the Government Code. You also state release of the submitted information may implicate the interests of the Texas Board of Nursing (the "board"). We have received comments from the board. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note information in Exhibit C2 consists of a completed investigation made by Parkland's police department, which is subject to section 552.022(a)(1) of the Government Code. Pursuant to section 552.022(a)(1), completed investigations, reports, and evaluations are expressly public unless they are either excepted under section 552.108 of the Government Code or confidential under the Act or other law. *Id.* § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure and does 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 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, Parkland may not withhold the information in Exhibit C2 under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider your argument under section 552.108 of the Government Code. We will also consider your arguments against disclosure for the 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 exception encompasses information other statutes make confidential, such as section 301.466 of the Occupations Code, which provides:

(a) A complaint and investigation concerning a nurse under this subchapter, and all information and material compiled by the board in connection with the complaint and investigation, and the information described by Subsection (d) are:

- (1) confidential and not subject to disclosure under [the Act]; and
- (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

- (1) a person involved with the board in a disciplinary action against the nurse;
- (2) a nursing licensing or disciplinary board in another jurisdiction;
- (3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions,

including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 301.466. Section 301.466 applies to information created or compiled by the board as part of an investigation by the board. The board informs us the information in Exhibit C1 was collected or created by the board as part of its investigation into a nurse. The board states the information in Exhibit C1 does not fall into any of the categories of information that are subject to disclosure under section 301.466(c). We find the requestor is not entitled to receive this information under section 301.466(b). Based on your representations and our review, we agree the information at issue is confidential under section 301.466(a). Accordingly, we conclude Parkland must withhold the information in Exhibit C1 under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 have submitted documentation from Parkland's police department stating the information in Exhibit C2 pertains to a concluded investigation that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue. Thus, Parkland may withhold the information in Exhibit C2 under section 552.108(a)(2).

In summary, Parkland must withhold Exhibit C1 under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. Parkland may withhold the information in Exhibit C2 under section 552.108(a)(2) of the Government Code.¹

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader". The signature is written in black ink and is positioned above the typed name.

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 567822

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)